

§ 41.34

17 CFR Ch. I (4–1–04 Edition)

in the public interest and consistent with the protection of investors.

(2) Each application must be filed with the Secretary of the Commission at its Washington, D.C. headquarters, in either electronic or hard copy form, signed by an authorized representative of the board of trade, and labeled “Application for an Exemptive Order pursuant to Commission regulation 41.33.”

(d) *Review Period.* (1) The Commission shall have 90 days upon receipt of an application for an exemptive order in which to make a determination as to whether such relief should be granted or denied.

(2) The Commission may request additional information from the applicant at any time prior to the end of the review period.

(3) The Commission may stay the review period if it determines that an application is materially incomplete; *provided, however*, that this paragraph (d) does not limit the Commission’s authority, under paragraph (b) of this section, to decline to entertain an application.

(e) Upon conclusion of the review period, the Commission shall issue an order granting or denying relief, or granting relief subject to conditions; *provided, however*, that the Commission’s obligations under this paragraph shall not limit its authority, under paragraph (b) of this section, to decline to entertain an application. The Commission shall notify the board of trade in writing of its decision to grant or deny relief under this paragraph.

(f) An application for an exemptive order may be withdrawn by the applicant at any time, without explanation, by filing with the Secretary of the Commission a written request for withdrawal, signed by an authorized representative of the board of trade.

(g) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight, with the concurrence of the General Counsel, authority to make determinations on applications for exemptive orders pursuant to this section; *provided, however*, that:

(1) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated pur-

suant to paragraph (g) of this section; and

(2) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Market Oversight under paragraph (g) of this section.

[66 FR 44511, Aug. 23, 2001, as amended at 67 FR 62352, Oct. 7, 2002]

§ 41.34 Exempt Provisions.

Any board of trade notice-designated as a contract market in security futures products pursuant to § 41.31 also shall be exempt from:

(a) The following provisions of the Act, pursuant to section 5f(b)(1) of the Act:

- (1) Section 4(c)(c);
- (2) Section 4(c)(e);
- (3) Section 4(c)(g);
- (4) Section 4j;
- (5) Section 5;
- (6) Section 5c;
- (7) Section 6a;
- (8) Section 8(d);
- (9) Section 9(f);
- (10) Section 16 and;

(b) The following provisions, pursuant to section 5f(b)(4) of the Act:

- (1) Section 6(a);
- (2) Part 38 of this chapter;
- (3) Part 40 of this chapter; and
- (4) Section 41.27.

[67 FR 11229, Mar. 13, 2002]

Subpart E—Customer Accounts and Margin Requirements

SOURCE: 67 FR 53171, Aug. 14, 2002, unless otherwise noted.

§ 41.41 Security futures products accounts.

(a) *Where security futures products may be held.* (1) A person registered with the Commission as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act (“CEA”) and registered with the Securities and Exchange Commission (“SEC”) as a broker or dealer pursuant to section 15(b)(1) of the Securities Exchange Act of 1934 (“Securities Exchange Act”) (“Full FCM/Full BD”) may hold all of a customer’s security futures products in a futures account, all of a customer’s

Commodity Futures Trading Commission

§41.41

security futures products in a securities account, or some of a customer's security futures products in a futures account and other security futures products of the same customer in a securities account. A person registered with the Commission as a futures commission merchant pursuant to section 4f(a)(2) of the CEA (a notice-registered FCM) may hold a customer's security futures products only in a securities account. A person registered with the SEC as a broker or dealer pursuant to section 15(b)(11) of the Securities Exchange Act (a notice-registered broker-dealer) may hold a customer's security futures products only in a futures account.

(2) A Full FCM/Full BD shall establish written policies or procedures for determining whether customer security futures products will be placed in a futures account and/or a securities account and, if applicable, the process by which a customer may elect the type or types of account in which security futures products will be held (including the procedure to be followed if a customer fails to make an election of account type).

(b) *Disclosure requirements.* (1) Except as provided in paragraph (b)(2), before a futures commission merchant accepts the first order for a security futures product from or on behalf of a customer, the firm shall furnish the customer with a disclosure document containing the following information:

(i) A description of the protections provided by the requirements set forth under section 4d of the CEA applicable to a futures account;

(ii) A description of the protections provided by the requirements set forth under Securities Exchange Act Rule 15c3-3 and the Securities Investor Protection Act of 1970 applicable to a securities account;

(iii) A statement indicating whether the customer's security futures products will be held in a futures account and/or a securities account, or whether the firm permits customers to make or change an election of account type; and

(iv) A statement that, with respect to holding the customer's security futures products in a securities account or a futures account, the alternative regulatory scheme is not available to the

customer in connection with that account.

(2) Where a customer account containing an open security futures product position is transferred to a futures commission merchant, that futures commission merchant may instead provide the statements described in paragraphs (b)(1)(iii) and (b)(1)(iv) above no later than ten business days after the date the account is transferred.

(c) *Changes in account type.* A Full FCM/Full BD may change the type of account in which a customer's security futures products will be held; provided, that:

(1) The firm creates a record of each change in account type, including the name of the customer, the account number, the date the firm received the customer's request to change the account type, if applicable, and the date the change in account type became effective; and

(2) The firm, at least ten business days before the customer's account type is changed:

(i) Notifies the customer in writing of the date that the change will become effective; and

(ii) Provides the customer with the disclosures described in paragraph (b)(1) above.

(d) *Recordkeeping requirements.* The Commission's recordkeeping rules set forth in §§1.31, 1.32, 1.35, 1.36, 1.37, 4.23, 4.33, 18.05 and 190.06 of this chapter shall apply to security futures product transactions and positions in a futures account (as that term is defined in §1.3(vv) of this chapter). These rules shall not apply to security futures product transactions and positions in a securities account (as that term is defined in §1.3(ww) of this chapter); *provided*, that the SEC's recordkeeping rules apply to those transactions and positions.

(e) *Reports to customers.* The Commission's reporting requirements set forth in §§1.33 and 1.46 of this chapter shall apply to security futures product transactions and positions in a futures account (as that term is defined in §1.3(vv) of this chapter). These rules shall not apply to security futures product transactions and positions in a

securities account (as that term is defined in § 1.3(w) of this chapter); *provided*, that the SEC's rules set forth in §§ 240.10b-10 and 240.15c3-2 of this chapter regarding delivery of confirmations and account statements apply to those transactions and positions.

(f) *Segregation of customer funds.* All money, securities, or property held to margin, guarantee or secure security futures products held in a futures account, or accruing to customers as a result of such products, are subject to the segregation requirements of section 4d of the CEA and the rules thereunder.

[67 FR 58297, Sept. 13, 2002]

§ 41.42 Customer margin requirements for security futures—authority, purpose, interpretation, and scope.

(a) *Authority and purpose.* Subpart E, §§ 41.42 through 41.49, and 17 CFR 242.400 through 242.406 ("this Regulation") are issued by the Commodity Futures Trading Commission ("Commission") jointly with the Securities and Exchange Commission ("SEC"), pursuant to authority delegated by the Board of Governors of the Federal Reserve System under section 7(c)(2)(A) of the Securities Exchange Act of 1934 ("Exchange Act"). The principal purpose of this Regulation (Subpart E, §§ 41.42 through 41.49) is to regulate customer margin collected by brokers, dealers, and members of national securities exchanges, including futures commission merchants required to register as brokers or dealers under section 15(b)(11) of the Exchange Act, relating to security futures.

(b) *Interpretation.* This Regulation (Subpart E, §§ 41.42 through 41.49) shall be jointly interpreted by the SEC and the Commission, consistent with the criteria set forth in clauses (i) through (iv) of section 7(c)(2)(B) of the Exchange Act and the provisions of Regulation T (12 CFR part 220).

(c) *Scope.* (1) This Regulation (Subpart E, §§ 41.42 through 41.49) does not preclude a self-regulatory authority, under rules that are effective in accordance with section 19(b)(2) of the Exchange Act or section 19(b)(7) of the Exchange Act and, as applicable, section 5c(c) of the Commodity Exchange Act ("Act"), or a security futures

intermediary from imposing additional margin requirements on security futures, including higher initial or maintenance margin levels, consistent with this Regulation (Subpart E, §§ 41.42 through 41.49), or from taking appropriate action to preserve its financial integrity.

(2) This Regulation (Subpart E, §§ 41.42 through 41.49) does not apply to:

(i) Financial relations between a customer and a security futures intermediary to the extent that they comply with a portfolio margining system under rules that meet the criteria set forth in section 7(c)(2)(B) of the Exchange Act and that are effective in accordance with section 19(b)(2) of the Exchange Act and, as applicable, section 5c(c) of the Act;

(ii) Financial relations between a security futures intermediary and a foreign person involving security futures traded on or subject to the rules of a foreign board of trade;

(iii) Margin requirements that clearing agencies registered under section 17A of the Exchange Act or derivatives clearing organizations registered under section 5b of the Act impose on their members;

(iv) Financial relations between a security futures intermediary and a person based on a good faith determination by the security futures intermediary that such person is an exempted person; and

(v) Financial relations between a security futures intermediary and, or arranged by a security futures intermediary for, a person relating to trading in security futures by such person for its own account, if such person:

(A) Is a member of a national securities exchange or national securities association registered pursuant to section 15A(a) of the Exchange Act; and

(B) Is registered with such exchange or such association as a security futures dealer pursuant to rules that are effective in accordance with section 19(b)(2) of the Exchange Act and, as applicable, section 5c(c) of the Act, that:

(I) Require such member to be registered as a floor trader or a floor broker with the Commission under section 4f(a)(1) of the Act, or as a dealer with the SEC under section 15(b) of the Exchange Act;

(2) Require such member to maintain records sufficient to prove compliance with this paragraph (c)(2)(v) and the rules of the exchange or association of which it is a member;

(3) Require such member to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis; and

(4) Provide for disciplinary action, including revocation of such member's registration as a security futures dealer, for such member's failure to comply with this Regulation (Subpart E, §§ 41.42 through 41.49) or the rules of the exchange or association.

(d) *Exemption.* The Commission may exempt, either unconditionally or on specified terms and conditions, financial relations involving any security futures intermediary, customer, position, or transaction, or any class of security futures intermediaries, customers, positions, or transactions, from one or more requirements of this Regulation (Subpart E, §§ 41.42 through 41.49), if the Commission determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of customers. An exemption granted pursuant to this paragraph shall not operate as an exemption from any SEC rules. Any exemption that may be required from such rules must be obtained separately from the SEC.

§ 41.43 Definitions.

(a) For purposes of this Regulation (Subpart E, §§ 41.42 through 41.49) only, the following terms shall have the meanings set forth in this section.

(1) *Applicable margin rules* and *margin rules applicable to an account* mean the rules and regulations applicable to financial relations between a security futures intermediary and a customer with respect to security futures and related positions carried in a securities account or futures account as provided in § 41.44(a) of this subpart.

(2) *Broker* shall have the meaning provided in section 3(a)(4) of the Exchange Act.

(3) *Contract multiplier* means the number of units of a narrow-based security index expressed as a dollar amount, in

accordance with the terms of the security future contract.

(4) *Current market value* means, on any day:

(i) With respect to a security future:

(A) If the instrument underlying such security future is a stock, the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable number of shares per contract; or

(B) If the instrument underlying such security future is a narrow-based security index, as defined in section 1a(25)(A) of the Act, the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable contract multiplier.

(ii) With respect to a security other than a security future, the most recent closing sale price of the security, as shown by any regularly published reporting or quotation service. If there is no recent closing sale price, the security futures intermediary may use any reasonable estimate of the market value of the security as of the most recent close of business.

(5) *Customer* excludes an exempted person and includes:

(i) Any person or persons acting jointly:

(A) On whose behalf a security futures intermediary effects a security futures transaction or carries a security futures position; or

(B) Who would be considered a customer of the security futures intermediary according to the ordinary usage of the trade;

(ii) Any partner in a security futures intermediary that is organized as a partnership who would be considered a customer of the security futures intermediary absent the partnership relationship; and

(iii) Any joint venture in which a security futures intermediary participates and which would be considered a customer of the security futures intermediary if the security futures intermediary were not a participant.

(6) *Daily settlement price* means, with respect to a security future, the settlement price of such security future determined at the close of trading each day, under the rules of the applicable

exchange, clearing agency, or derivatives clearing organization.

(7) *Dealer* shall have the meaning provided in section 3(a)(5) of the Exchange Act.

(8) *Equity* means the equity or margin equity in a securities or futures account, as computed in accordance with the margin rules applicable to the account and subject to adjustment under § 41.46(c), (d) and (e) of this subpart.

(9) *Exempted person* means:

(i) A member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant, a substantial portion of whose business consists of transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, futures commission merchants, floor brokers, or floor traders, and includes a person who:

(A) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader that are effecting transactions in securities, commodity futures, or commodity options;

(B) Earns at least \$10 million in gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader; or

(C) Earns at least 10 percent of its gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader.

(ii) For purposes of paragraph (a)(9)(i) of this section only, *persons affiliated with a futures commission merchant, floor broker, or floor trader* means any

partner, officer, director, or branch manager of such futures commission merchant, floor broker, or floor trader (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such futures commission merchant, floor broker, or floor trader, or any employee of such a futures commission merchant, floor broker, or floor trader.

(iii) A member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant that has been in existence for less than one year may meet the definition of exempted person based on a six-month period.

(10) *Exempted security* shall have the meaning provided in section 3(a)(12) of the Exchange Act.

(11) *Floor broker* shall have the meaning provided in section 1a(16) of the Act.

(12) *Floor trader* shall have the meaning provided in section 1a(17) of the Act.

(13) *Futures account* shall have the meaning provided in § 1.3(vv) of this chapter.

(14) *Futures commission merchant* shall have the meaning provided in section 1a(20) of the Act.

(15) *Good faith*, with respect to making a determination or accepting a statement concerning financial relations with a person, means that the security futures intermediary is alert to the circumstances surrounding such financial relations, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

(16) *Listed option* means a put or call option that is:

(i) Issued by a clearing agency that is registered under section 17A of the Exchange Act or cleared and guaranteed by a derivatives clearing organization that is registered under section 5b of the Act; and

(ii) Traded on or subject to the rules of a self-regulatory authority.

(17) *Margin call* means a demand by a security futures intermediary to a customer for a deposit of cash, securities

Commodity Futures Trading Commission

§41.43

or other assets to satisfy the required margin for security futures or related positions or a special margin requirement.

(18) *Margin deficiency* means the amount by which the required margin in an account is not satisfied by the equity in the account, as computed in accordance with §41.46 of this subpart.

(19) *Margin equity security* shall have the meaning provided in Regulation T.

(20) *Margin security* shall have the meaning provided in Regulation T.

(21) *Member* shall have the meaning provided in section 3(a)(3) of the Exchange Act, and shall include persons registered under section 15(b)(11) of the Exchange Act that are permitted to effect transactions on a national securities exchange without the services of another person acting as executing broker.

(22) *Money market mutual fund* means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 that is considered a money market fund under §270.2a-7 of this title.

(23) *Persons associated with a broker or dealer* shall have the meaning provided in section 3(a)(18) of the Exchange Act.

(24) *Regulation T* means Regulation T promulgated by the Board of Governors of the Federal Reserve System, 12 CFR part 220, as amended from time to time.

(25) *Regulation T collateral value*, with respect to a security, means the current market value of the security reduced by the percentage of required margin for a position in the security held in a margin account under Regulation T.

(26) *Related position*, with respect to a security future, means any position in an account that is combined with the security future to create an offsetting position as provided in §41.45(b)(2) of this subpart.

(27) *Related transaction*, with respect to a position or transaction in a security future, means:

(i) Any transaction that creates, eliminates, increases or reduces an offsetting position involving a security future and a related position, as provided in §41.45(b)(2) of this subpart; or

(ii) Any deposit or withdrawal of margin for the security future or a re-

lated position, except as provided in §41.47(b) of this subpart.

(28) *Securities account* shall have the meaning provided in §1.3(w) of this chapter.

(29) *Security futures intermediary* means any creditor as defined in Regulation T with respect to its financial relations with any person involving security futures, including:

(i) Any futures commission merchant;

(ii) Any partner, officer, director, or branch manager (or person occupying a similar status or performing similar functions) of a futures commission merchant;

(iii) Any person directly or indirectly controlling, controlled by, or under common control with (except for business entities controlling or under common control with) a futures commission merchant; and

(iv) Any employee of a futures commission merchant (except an employee whose functions are solely clerical or ministerial).

(30) *Self-regulatory authority* means a national securities exchange registered under section 6 of the Exchange Act, a national securities association registered under section 15A of the Exchange Act, a contract market registered under section 5 of the Act or section 5f of the Act, or a derivatives transaction execution facility registered under section 5a of the Act.

(31) *Special margin requirement* shall have the meaning provided in §41.46(e)(1)(ii) of this subpart.

(32) *Variation settlement* means any credit or debit to a customer account, made on a daily or intraday basis, for the purpose of marking to market a security future or any other contract that is:

(i) Issued by a clearing agency that is registered under section 17A of the Exchange Act or cleared and guaranteed by a derivatives clearing organization that is registered under section 5b of the Act; and

(ii) Traded on or subject to the rules of a self-regulatory authority.

(b) Terms used in this Regulation (Subpart E, §§41.42 through 41.49) and not otherwise defined in this section shall have the meaning set forth in the margin rules applicable to the account.

(c) Terms used in this Regulation (Subpart E, §§41.42 through 41.49) and not otherwise defined in this section or in the margin rules applicable to the account shall have the meaning set forth in the Exchange Act and the Act; if the definitions of a term in the Exchange Act and the Act are inconsistent as applied in particular circumstances, such term shall have the meaning set forth in rules, regulations, or interpretations jointly promulgated by the SEC and the Commission.

§ 41.44 General provisions.

(a) *Applicable margin rules.* Except to the extent inconsistent with this Regulation (Subpart E, §§41.42 through 41.49):

(1) A security futures intermediary that carries a security future on behalf of a customer in a securities account shall record and conduct all financial relations with respect to such security future and related positions in accordance with Regulation T and the margin rules of the self-regulatory authorities of which the security futures intermediary is a member.

(2) A security futures intermediary that carries a security future on behalf of a customer in a futures account shall record and conduct all financial relations with respect to such security future and related positions in accordance with the margin rules of the self-regulatory authorities of which the security futures intermediary is a member.

(b) *Separation and consolidation of accounts.* (1) The requirements for security futures and related positions in one account may not be met by considering items in any other account, except as permitted or required under paragraph (b)(2) of this section or applicable margin rules. If withdrawals of cash, securities or other assets deposited as margin are permitted under this Regulation (Subpart E, §§41.42 through 41.49), bookkeeping entries shall be made when such cash, securities, or assets are used for purposes of meeting requirements in another account.

(2) Notwithstanding paragraph (b)(1) of this section, the security futures intermediary shall consider all futures accounts in which security futures and related positions are held that are

within the same regulatory classification or account type and are owned by the same customer to be a single account for purposes of this Regulation (Subpart E, §§41.42 through 41.49). The security futures intermediary may combine such accounts with other futures accounts that are within the same regulatory classification or account type and are owned by the same customer for purposes of computing a customer's overall margin requirement, as permitted or required by applicable margin rules.

(c) *Accounts of partners.* If a partner of the security futures intermediary has an account with the security futures intermediary in which security futures or related positions are held, the security futures intermediary shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of any such account.

(d) *Contribution to joint venture.* If an account in which security futures or related positions are held is the account of a joint venture in which the security futures intermediary participates, any interest of the security futures intermediary in the joint account in excess of the interest which the security futures intermediary would have on the basis of its right to share in the profits shall be margined in accordance with this Regulation (Subpart E, §§41.42 through 41.49).

(e) *Extensions of credit.* (1) No security futures intermediary may extend or maintain credit to or for any customer for the purpose of evading or circumventing any requirement under this Regulation (Subpart E, §§41.42 through 41.49).

(2) A security futures intermediary may arrange for the extension or maintenance of credit to or for any customer by any person, provided that the security futures intermediary does not willfully arrange credit that would constitute a violation of Regulation T, U or X of the Board of Governors of the Federal Reserve System (12 CFR parts 220, 221, and 224) by such person.

(f) *Change in exempted person status.* Once a person ceases to qualify as an exempted person, it shall notify the security futures intermediary of this fact

before entering into any new security futures transaction or related transaction that would require additional margin to be deposited under this Regulation (Subpart E, §§ 41.42 through 41.49). Financial relations with respect to any such transactions shall be subject to the provisions of this Regulation (Subpart E, §§ 41.42 through 41.49).

§ 41.45 Required margin.

(a) *Applicability.* Each security futures intermediary shall determine the required margin for the security futures and related positions held on behalf of a customer in a securities account or futures account as set forth in this section.

(b) *Required margin—(1) General rule.* The required margin for each long or short position in a security future shall be twenty (20) percent of the current market value of such security future.

(2) *Offsetting positions.* Notwithstanding the margin levels specified in paragraph (b)(1) of this section, a self-regulatory authority may set the required initial or maintenance margin level for an offsetting position involving security futures and related positions at a level lower than the level that would be required under paragraph (b)(1) of this section if such positions were margined separately, pursuant to rules that meet the criteria set forth in section 7(c)(2)(B) of the Exchange Act and are effective in accordance with section 19(b)(2) of the Exchange Act and, as applicable, section 5c(c) of the Act.

(c) *Procedures for certain margin level adjustments.* An exchange registered under section 6(g) of the Exchange Act, or a national securities association registered under section 15A(k) of the Exchange Act, may raise or lower the required margin level for a security future to a level not lower than that specified in this section, in accordance with section 19(b)(7) of the Exchange Act.

§ 41.46 Type, form and use of margin.

(a) *When margin is required.* Margin is required to be deposited whenever the required margin for security futures and related positions in an account is not satisfied by the equity in the ac-

count, subject to adjustment under paragraph (c) of this section.

(b) *Acceptable margin deposits.* (1) The required margin may be satisfied by a deposit of cash, margin securities (subject to paragraph (b)(2) of this section), exempted securities, any other asset permitted under Regulation T to satisfy a margin deficiency in a securities margin account, or any combination thereof, each as valued in accordance with paragraph (c) of this section.

(2) Shares of a money market mutual fund may be accepted as a margin deposit for purposes of this Regulation (Subpart E, §§ 41.42 through 41.49), *Provided that:*

(i) The customer waives any right to redeem the shares without the consent of the security futures intermediary and instructs the fund or its transfer agent accordingly;

(ii) The security futures intermediary (or clearing agency or derivatives clearing organization with which the shares are deposited as margin) obtains the right to redeem the shares in cash, promptly upon request; and

(iii) The fund agrees to satisfy any conditions necessary or appropriate to ensure that the shares may be redeemed in cash, promptly upon request.

(c) *Adjustments—(1) Futures accounts.* For purposes of this section, the equity in a futures account shall be computed in accordance with the margin rules applicable to the account, subject to the following:

(i) A security future shall have no value;

(ii) Each net long or short position in a listed option on a contract for future delivery shall be valued in accordance with the margin rules applicable to the account;

(iii) Except as permitted in paragraph (e) of this section, each margin equity security shall be valued at an amount no greater than its Regulation T collateral value;

(iv) Each other security shall be valued at an amount no greater than its current market value reduced by the percentage specified for such security in § 240.15c3-1(c)(2)(vi) of this title;

(v) Freely convertible foreign currency may be valued at an amount no

greater than its daily marked-to-market U.S. dollar equivalent;

(vi) Variation settlement receivable (or payable) by an account at the close of trading on any day shall be treated as a credit (or debit) to the account on that day; and

(vii) Each other acceptable margin deposit or component of equity shall be valued at an amount no greater than its value under Regulation T.

(2) *Securities accounts.* For purposes of this section, the equity in a securities account shall be computed in accordance with the margin rules applicable to the account, subject to the following:

(i) A security future shall have no value;

(ii) Freely convertible foreign currency may be valued at an amount no greater than its daily mark-to-market U.S. dollar equivalent; and

(iii) Variation settlement receivable (or payable) by an account at the close of trading on any day shall be treated as a credit (or debit) to the account on that day.

(d) *Satisfaction restriction.* Any transaction, position or deposit that is used to satisfy the required margin for security futures or related positions under this Regulation (Subpart E, §§41.42 through 41.49), including a related position, shall be unavailable to satisfy the required margin for any other position or transaction or any other requirement.

(e) *Alternative collateral valuation for margin equity securities in a futures account.* (1) Notwithstanding paragraph (c)(1)(iii) of this section, a security futures intermediary need not value a margin equity security at its Regulation T collateral value when determining whether the required margin for the security futures and related positions in a futures account is satisfied, *provided that:*

(i) The margin equity security is valued at an amount no greater than the current market value of the security reduced by the lowest percentage level of margin required for a long position in the security held in a margin account under the rules of a national securities exchange registered pursuant to section 6(a) of the Exchange Act;

(ii) Additional margin is required to be deposited on any day when the day's security futures transactions and related transactions would create or increase a margin deficiency in the account if the margin equity securities were valued at their Regulation T collateral value, and shall be for the amount of the margin deficiency so created or increased (a "special margin requirement"); and

(iii) Cash, securities, or other assets deposited as margin for the positions in an account are not permitted to be withdrawn from the account at any time that:

(A) Additional cash, securities, or other assets are required to be deposited as margin under this section for a transaction in the account on the same or a previous day; or

(B) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency if the margin equity securities were valued at their Regulation T collateral value.

(2) All security futures transactions and related transactions on any day shall be combined to determine the amount of a special margin requirement. Additional margin deposited to satisfy a special margin requirement shall be valued at an amount no greater than its Regulation T collateral value.

(3) If the alternative collateral valuation method set forth in paragraph (e) of this section is used with respect to an account in which security futures or related positions are carried:

(i) An account that is transferred from one security futures intermediary to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this Regulation (Subpart E, §§41.42 through 41.49) has been satisfied; and

(ii) An account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this Regulation (Subpart E, §§41.42 through 41.49), may be treated as if it had been maintained for the transferee from the date

of its origin, if the security futures intermediary accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(f) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of determining whether the required margin in an account is satisfied, except as permitted under applicable margin rules.

§ 41.47 Withdrawal of margin.

(a) *By the customer.* Except as otherwise provided in § 41.46(e)(1)(ii) of this subpart, cash, securities, or other assets deposited as margin for positions in an account may be withdrawn, provided that the equity in the account after such withdrawal is sufficient to satisfy the required margin for the security futures and related positions in the account under this Regulation (Subpart E, §§ 41.42 through 41.49).

(b) *By the security futures intermediary.* Notwithstanding paragraph (a) of this section, the security futures intermediary, in its usual practice, may deduct the following items from an account in which security futures or related positions are held if they are considered in computing the balance of such account:

(1) Variation settlement payable, directly or indirectly, to a clearing agency that is registered under section 17A of the Exchange Act or a derivatives clearing organization that is registered under section 5b of the Act;

(2) Interest charged on credit maintained in the account;

(3) Communication or shipping charges with respect to transactions in the account;

(4) Payment of commissions, brokerage, taxes, storage and other charges lawfully accruing in connection with the positions and transactions in the account;

(5) Any service charges that the security futures intermediary may impose; or

(6) Any other withdrawals that are permitted from a securities margin account under Regulation T, to the extent permitted under applicable margin rules.

§ 41.48 Undermargined accounts.

(a) *Failure to satisfy margin call.* If any margin call required by this Regulation (Subpart E, §§ 41.42 through 41.49) is not met in full, the security futures intermediary shall take the deduction required with respect to an undermargined account in computing its net capital under SEC or Commission rules.

(b) *Accounts that liquidate to a deficit.* If at any time there is a liquidating deficit in an account in which security futures are held, the security futures intermediary shall take steps to liquidate positions in the account promptly and in an orderly manner.

(c) *Liquidation of undermargined accounts not required.* Notwithstanding § 41.44(a)(1) of this subpart, § 220.4(d) of Regulation T (12 CFR 220.4(d)) respecting liquidation of positions in lieu of deposit shall not apply with respect to security futures carried in a securities account.

§ 41.49 Filing proposed margin rule changes with the Commission.

(a) *Notification requirement for notice-designated contract markets.* Any self-regulatory authority that is registered with the Commission as a designated contract market under section 5f of the Act shall, when filing a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with section 19(b)(2) of the Exchange Act, concurrently provide to the Commission a copy of such proposed rule change and any accompanying documentation filed with the SEC.

(b) *Filing requirements under the Act.* Any self-regulatory authority that is registered with the Commission as a designated contract market under section 5 of the Act or a derivatives transaction execution facility under section 5a of the Act shall, when filing a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with section 19(b)(2) of the Exchange Act, submit such proposed rule change to the Commission as follows:

(1) If the self-regulatory authority elects to request the Commission's prior approval for the proposed rule change pursuant to section 5c(c)(2) of

Pt. 42

the Act, it shall concurrently file the proposed rule change with the Commission in accordance with §40.5 of this chapter.

(2) If the self-regulatory authority elects to implement a proposed rule change by written certification pursuant to section 5c(c)(1) of the Act, it shall concurrently provide to the Commission a copy of the proposed rule change and any accompanying documentation filed with the SEC. Promptly after obtaining SEC approval for the proposed rule change, such self-regulatory authority shall file its written certification with the Commission in accordance with §40.6 of this chapter.

PART 42—ANTI-MONEY LAUNDERING, TERRORIST FINANCING

Subpart A—General Provisions

Sec.

42.1 [Reserved]

42.2 Compliance with Bank Secrecy Act

AUTHORITY: 7 U.S.C. 1a, 2, 5, 6, 6b, 6d, 6f, 6g, 7, 7a, 7a-1, 7a-2, 7b, 7b-1, 7b-2, 9, 12, 12a, 12c, 13a, 13a-1, 13c, 16 and 21; 12 U.S.C. 1786(q), 1818, 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, secs. 312-314, 319, 321, 326, 352, Pub. L. 107-56, 115 Stat. 307.

SOURCE: 68 FR 25159, May 9, 2003, unless otherwise noted.

Subpart A—General Provisions

§ 42.1 [Reserved]

§ 42.2 Compliance with Bank Secrecy Act.

Every futures commission merchant and introducing broker shall comply with the applicable provisions of the Bank Secrecy Act and the regulations promulgated by the Department of the Treasury under that Act at 31 CFR Part 103, and with the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Commission and the Department of the Treasury at 31 CFR 103.123, which require that a customer identification program be adopted as part of the firm's Bank Secrecy Act compliance program.

17 CFR Ch. I (4-1-04 Edition)

PART 100—DELIVERY PERIOD REQUIRED

AUTHORITY: 7 U.S.C. 7a(a)(4) and 12a.

§ 100.1 Delivery period required with respect to certain grains.

A period of seven business days is required during which contracts for future delivery in the current delivery month of wheat, corn, oats, barley, rye, or flaxseed may be settled by delivery of the actual cash commodity after trading in such contracts has ceased, for each delivery month after May 1938, on all contract markets on which there is trading in futures in any of such commodities, and such contract markets, and each of them, are directed to provide therefor.

[41 FR 3211, Jan. 21, 1976]

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

Subpart A—Organization

Sec.

140.1 Headquarters office.

140.2 Regional offices—Regional directors.

Subpart B—Functions

140.10 The Commission.

140.11 Emergency action by the senior Commissioner available.

140.12 Disposition of business by seriatim Commission consideration.

140.13 Vacancy in position of Chairman.

140.14 Delegation of authority to the Secretary of the Commission.

140.20 Designation of senior official to oversee Commission use of national security information.

140.21 Definitions.

140.22 Procedures.

140.23 General access requirements.

140.24 Control and accountability procedures.

140.61 [Reserved]

140.72 Delegation of authority to disclose confidential information to a contract market, registered futures association or self-regulatory organization.

140.73 Delegation of authority to disclose information to United States, States, and foreign government agencies and foreign futures authorities.

140.74 Delegation of authority to issue special calls for Series 03 Reports and Form 40.