

§ 41.33

17 CFR Ch. I (4–1–10 Edition)

(A) Such information related to its business as a designated contract market in security futures products as the Commission may request; and

(B) A written demonstration, containing such supporting data and other information and documents as the Commission may specify, that the board of trade is in compliance with one or more applicable provisions of the Act or regulations thereunder as specified in the request.

(2) Any information filed pursuant to paragraph (a) of this section shall be addressed to the Secretary of the Commission at its Washington, D.C. headquarters, shall be labeled “SFPCM Continuing Obligations,” and may be transmitted in either electronic or hard copy form.

(b) Except as exempted under section 5f(b) of the Act or under §§ 41.33 and 41.34 of this chapter, any board of trade designated as a contract market in security futures products pursuant to § 41.31 of this chapter shall be subject to all applicable requirements of the Act and regulations thereunder. Failure to comply shall subject the board of trade to Commission action under, among other provisions, sections 5e and 6(b) of the Act.

§ 41.33 Applications for exemptive orders.

(a) Any board of trade designated as a contract market in security futures products pursuant to § 41.31 of this chapter may apply to the Commission for an exemption from any provision of the Act or regulations thereunder. Except as provided in sections 5f(b)(1) and 5f(b)(2) of the Act, the Commission shall have sole discretion to exempt a board of trade, conditionally or unconditionally, from any provision of the Act or regulations thereunder pursuant to this section. The Commission may issue such an exemptive order in response to an application only to the extent it finds, after review, that the issuance of an exemptive order is necessary or appropriate in the public interest and is consistent with the protection of investors.

(b) Each application for exemptive relief must comply with the requirements of this section. The Commission may, in its sole discretion, decline to

entertain any application for an exemptive order under this section without explanation; *provided, however*, that the Commission shall notify the board of trade of such a decision in writing.

(c) Application requirements. (1) Each application for an exemptive order made pursuant to this section must include:

(i) The name and address of the board of trade requesting relief, and the name and telephone number of a person whom Commission staff may contact to obtain additional information regarding the request;

(ii) A certification that the registration of the board of trade is not suspended pursuant to an order of the Securities and Exchange Commission;

(iii) The provision(s) of the Act or regulations thereunder from which the board of trade seeks relief and, if applicable, whether the board of trade is otherwise subject to similar provisions as a result of Securities and Exchange Commission jurisdiction; and

(iv) The type of relief requested and the order sought; an explanation of the need for relief, including all material facts and circumstances giving rise to the request; and the extent to which such relief is necessary or appropriate 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 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 pursuant 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 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