

Commodity Futures Trading Commission

§ 41.2

Subpart E—Customer Accounts and Margin Requirements

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AUTHORITY: Sections 206, 251 and 252, Pub. L. 106-554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a-2, 12a; 15 U.S.C. 78g(c)(2).

SOURCE: 66 FR 44511, Aug. 23, 2001, unless otherwise noted.

Subpart A—General Provisions

§ 41.1 Definitions.

For purposes of this part:

(a) Alternative trading system shall have the meaning set forth in section 1a(1) of the Act.

(b) Board of trade shall have the meaning set forth in section 1a(2) of the Act.

(c) *Broad-based security index* means a group or index of securities that does not constitute a narrow-based security index.

(d) *Foreign board of trade* means a board of trade located outside of the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options are entered into.

(e) *Narrow-based security index* has the same meaning as in section 1a(25) of the Commodity Exchange Act.

(f) National securities association means a board of trade registered with the Securities and Exchange Commission pursuant to section 15A(a) of the Securities Exchange Act of 1934.

(g) National securities exchange means a board of trade registered with the Securities and Exchange Commission pursuant to section 6(a) of the Securities Exchange Act of 1934.

(h) Rule shall have the meaning set forth in Commission regulation 40.1.

(i) Security futures product shall have the meaning set forth in section 1a(32) of the Act.

(j) *Opening price* means the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, during the regular trading session of the national securities exchange or national securities association that lists the security. If the security is not listed on a national securities exchange or a national securities association, then *opening price* shall mean the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, on the primary market for the security.

(k) *Regular trading session* of a security means the normal hours for business of a national securities exchange or national securities association that lists the security.

(1) *Regulatory halt* means a delay, halt, or suspension in the trading of a security, that is instituted by the national securities exchange or national securities association that lists the security, as a result of:

(1) A determination that there are matters relating to the security or issuer that have not been adequately disclosed to the public, or that there are regulatory problems relating to the security which should be clarified before trading is permitted to continue; or

(2) The operation of circuit breaker procedures to halt or suspend trading in all equity securities trading on that national securities exchange or national securities association.

[66 FR 44511, Aug. 23, 2001, as amended at 66 FR 44965, Aug. 27, 2001; 67 FR 36761, May 24, 2002]

§ 41.2 Required records.

A designated contract market or registered derivatives transaction execution facility that trades a security index or security futures product shall maintain in accordance with the requirements of § 1.31 books and records of all activities related to the trading of such products, including: Records related to any determination under subpart B of this part whether or not a futures contract on a security index is a narrow-based security index or a broad-based security index.

§ 41.3

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§ 41.3 Application for an exemptive order pursuant to section 4f(a)(4)(B) of the Act.

(a) Any futures commission merchant or introducing broker registered in accordance with the notice registration provisions of § 3.10 of this chapter, or any broker or dealer exempt from floor broker or floor trader registration pursuant to section 4f(a)(3) of the Act, may apply to the Commission for an order pursuant to section 4f(a)(4)(B) of the Act granting exemption to such person from any provision of the Act or the Commission's regulations other than sections 4c(b), 4c(d), 4c(e), 4c(g), 4d, 4e, 4h, 4f(b), 4f(c), 4j, 4k(1), 4p, 6d, 8(d), 8(g), and 16 of the Act and the rules thereunder.

(b) An application pursuant to this section must set forth in writing or in an electronic mail message the following information:

(1) The name, main business address and main business telephone number of the person applying for an order;

(2) The capacity in which the person is registered with the Securities and Exchange Commission and the person's CRD number (if a member of the National Association of Securities Dealers, Inc.) or equivalent self-regulatory organization identification, together with a certification, if true, that the person's registration is not suspended pursuant to an order of the Securities and Exchange Commission;

(3) The particular section(s) of the Act and/or provision(s) of the Commission's regulations with respect to which the person seeks exemption;

(4) Any provision(s) of the securities laws or rules, or of the rules of a securities self-regulatory organization analogous to the provision(s);

(5) A clear explanation of the facts and circumstances under which the person believes that the requested exemptive relief is necessary or appropriate in the public interest; and

(6) A clear explanation of the extent to which the requested exemptive relief is consistent with the protection of investors.

(c) A national securities exchange or other securities industry self-regulatory organization may submit an application for an order pursuant to this section on behalf of its members.

(d) An application for an order must be submitted to the Director of the Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, if in paper form, or to *tm@cftc.gov* if submitted via electronic mail.

(e) The Commission may, in its sole discretion, grant the application, deny the application, decline to entertain the application, or grant the application subject to one or more conditions.

[66 FR 43086, Aug. 17, 2001. Redesignated at 67 FR 53171, Aug. 14, 2002, as amended at 67 FR 62352, Oct. 7, 2002]

§§ 41.4–41.9 [Reserved]

Subpart B—Narrow-Based Security Indexes

§ 41.11 Method for determining market capitalization and dollar value of average daily trading volume; application of the definition of narrow-based security index.

(a) *Market capitalization.* For purposes of Section 1a(25)(B) of the Act (7 U.S.C. 1a(25)(B)):

(1) On a particular day, a security shall be 1 of 750 securities with the largest market capitalization as of the preceding 6 full calendar months when it is included on a list of such securities designated by the Commission and the SEC as applicable for that day.

(2) In the event that the Commission and the SEC have not designated a list under paragraph (a)(1) of this section:

(i) The method to be used to determine market capitalization of a security as of the preceding 6 full calendar months is to sum the values of the market capitalization of such security for each U.S. trading day of the preceding 6 full calendar months, and to divide this sum by the total number of such trading days.

(ii) The 750 securities with the largest market capitalization shall be identified from the universe of all NMS securities as defined in § 242.600 that are common stock or depository shares.

(b) *Dollar value of ADTV.* (1) For purposes of Section 1a(25)(A) and (B) of the Act (7 U.S.C. 1a(25)(A) and (B)):