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,
6(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 fol-
lowing 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 Na-
tional Association of Securities Deal-
ers, 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 Commis-
sion’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 secu-
rities 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 ex-
emptive relief is necessary or appro-
priate in the public interest; and

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

(c) A national securities exchange or
other securities industry self-regu-
latory organization may submit an ap-
lication 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 Di-
vision 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 elec-
tronic mail.

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

§§ 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; appli-
cation 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 securi-
ties 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 deter-
mine market capitalization of a secu-
rity 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 pre-
ceding 6 full calendar months, and to
divide this sum by the total number of
such trading days.

(ii) The 750 securities with the larg-
est market capitalization shall be iden-
tified from the universe of all NMS se-
curities as defined in §242.600 that are
common stock or depositary shares.

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

(i)(A) The method to be used to deter-
dine the dollar value of ADTV of a secu-
rity is to sum the dollar value of
ADTV of all reported transactions in
such security in each jurisdiction as
calculated pursuant to paragraphs
(b)(1)(ii) and (iii) of this section.

(B) The dollar value of ADTV of a secu-
rity shall include the value of all re-
ported transactions for such security
and for any depositary share that rep-
resents such security.
Commodity Futures Trading Commission

§ 41.11

(C) The dollar value of ADTV of a depositary share shall include the value of all reported transactions for such depositary share and for the security that is represented by such depositary share.

(ii) For trading in a security in the United States, the method to be used to determine the dollar value of ADTV as of the preceding 6 full calendar months is to sum the value of all reported transactions in such security for each U.S. trading day during the preceding 6 full calendar months, and to divide this sum by the total number of such trading days.

(iii)(A) For trading in a security in a jurisdiction other than the United States, the method to be used to determine the dollar value of ADTV as of the preceding 6 full calendar months is to sum the value in U.S. dollars of all reported transactions in such security in such jurisdiction for each trading day during the preceding 6 full calendar months, and to divide this sum by the total number of trading days in such jurisdiction during the preceding 6 full calendar months.

(B) If the value of reported transactions used in calculating the ADTV of securities under paragraph (b)(1)(iii)(A) is reported in a currency other than U.S. dollars, the total value of each day’s transactions in such currency shall be converted into U.S. dollars on the basis of a spot rate of exchange for that day obtained from at least one independent entity that provides or disseminates foreign exchange quotations in the ordinary course of its business.

(iv) The dollar value of ADTV of the lowest weighted 25% of an index is the sum of the dollar value of ADTV of each of the component securities comprising the lowest weighted 25% of such index.

(2) For purposes of Section 1a(25)(B)(III)(cc) of the Act (7 U.S.C. 1a(25)(B)(III)(cc)): (i) On a particular day, a security shall be 1 of 675 securities with the largest dollar value of ADTV 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.

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

(A) The method to be used to determine the dollar value of ADTV of a security as of the preceding 6 full calendar months is to sum the value of all reported transactions in such security in the United States for each U.S. trading day during the preceding 6 full calendar months, and to divide this sum by the total number of such trading days.

(B) The 675 securities with the largest dollar value of ADTV shall be identified from the universe of all NMS securities as defined in §242.600 that are common stock or depositary shares.

(c) Depositary Shares and Section 12 Registration. For purposes of Section 1a(25)(B)(III)(aa) of the Act (7 U.S.C. 1a(25)(B)(III)(aa)), the requirement that each component security of an index be registered pursuant to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) shall be satisfied with respect to any security that is a depositary share if the deposited securities underlying the depositary share are registered pursuant to Section 12 of the Securities Exchange Act of 1934 and the depositary share is registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.) on Form F–6 (17 CFR 239.36).

(d) Definitions. For purposes of this section:

(1) SEC means the Securities and Exchange Commission.

(2) Closing price of a security means:

(i) If reported transactions in the security have taken place in the United States, the price at which the last transaction in such security took place in the regular trading session of the principal market for the security in the United States.

(ii) If no reported transactions in a security have taken place in the United States, the closing price of such security shall be the closing price of any depositary share representing such security divided by the number of shares represented by such depositary share.

(iii) If no reported transactions in a security or in a depositary share representing such security have taken place in the United States, the closing price of such security shall be the price
§ 41.12 Indexes underlying futures contracts trading for fewer than 30 days.

(a) An index on which a contract of sale for future delivery is trading on a designated contract market, registered derivatives transaction execution facility, or foreign board of trade is not a narrow-based security index under Section 1a(25) of the Act (7 U.S.C. 1a(25)) for the first 30 days of trading, if:

at which the last transaction in such security took place in the regular trading session of the principal market for the security. If such price is reported in a currency other than U.S. dollars, such price shall be converted into U.S. dollars on the basis of a spot rate of exchange relevant for the time of the transaction obtained from at least one independent entity that provides or disseminates foreign exchange quotations in the ordinary course of its business.

(3) Depositary share has the same meaning as in §240.12b–2.

(4) Foreign financial regulatory authority has the same meaning as in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(52)).

(5) Lowest weighted 25% of an index. With respect to any particular day, the lowest weighted component securities comprising, in the aggregate, 25% of an index’s weighting for purposes of Section 1a(25)(A)(iv) of the Act (7 U.S.C. 1a(25)(A)(iv)) (“lowest weighted 25% of an index”) means those securities:

(i) That are the lowest weighted securities when all the securities in such index are ranked from lowest to highest based on the index’s weighting methodology; and

(ii) For which the sum of the weight of such securities is equal to, or less than, 25% of the index’s total weighting.

(6) Market capitalization of a security on a particular day:

(i) If the security is not a depositary share, is the product of:

(A) The closing price of such security on that same day; and

(B) The number of outstanding shares of such security on that same day.

(ii) If the security is a depositary share, is the product of:

(A) The closing price of the depositary share on that same day divided by the number of deposited securities represented by such depositary share; and

(B) The number of outstanding shares of the security represented by the depositary share on that same day.

(7) Outstanding shares of a security means the number of outstanding shares of such security as reported on the most recent Form 10–K, Form 10–Q, Form 10–KSB, Form 10–QSB, or Form 20–F (17 CFR 249.310, 249.308a, 249.310b, 249.308b, or 249.220f) filed with the Securities and Exchange Commission by the issuer of such security, including any change to such number of outstanding shares subsequently reported by the issuer on a Form 8–K (17 CFR 249.308).

(8) Preceding 6 full calendar months means, with respect to a particular day, the period of time beginning on the same day of the month 6 months before and ending on the day prior to such day.

(9) Principal market for a security means the single securities market with the largest reported trading volume for the security during the preceding 6 full calendar months.

(10) Reported transaction means:

(i) With respect to securities transactions in the United States, any transaction for which a transaction report is collected, processed, and made available pursuant to an effective transaction reporting plan, or for which a transaction report, last sale data, or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(51)(A)(ii)); and

(ii) With respect to securities transactions outside the United States, any transaction that has been reported to a foreign financial regulatory authority in the jurisdiction where such transaction has taken place.

(11) U.S. trading day means any day on which a national securities exchange is open for trading.

(12) Weighting of a component security of an index means the percentage of such index’s value represented, or accounted for, by such component security.


§ 41.12 Indexes underlying futures contracts trading for fewer than 30 days.