

Securities and Exchange Commission

§ 240.3a44-1

a futures commission merchant, a business affiliate that is controlled by, controlling, or under common control with the futures commission merchant, or an introducing broker that is guaranteed by the futures commission merchant.

(4) *Futures* and *futures contracts* mean contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market designated by the CFTC or traded on or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

(5) *Options on futures* means puts or calls on a futures contract traded on or subject to the rules of a contract market designated by the CFTC or traded or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

[52 FR 27969, July 24, 1987]

§ 240.3a44-1 Proprietary government securities transactions incidental to the futures-related business of a CFTC-regulated person.

(a) A person registered with the Commodity Futures Trading Commission (“CFTC”), a contract market designated by the CFTC, such a contract market’s affiliated clearing organization, or any floor trader or such a contract market (hereinafter referred to collectively as a “CFTC-regulated person”) is not a government securities dealer solely because such person effects transactions for its own account in government securities that are defined in paragraph (b) of this section as incidental to such person’s futures-related business.

(b) Provided that a CFTC-regulated person does not advertise or otherwise hold itself out as a government securities dealer except as permitted under rule 3a43-1 (§240.3a43-1) the following transactions in government securities for its own account are incidental to the futures-related business of such a CFTC-regulated person:

(1) Transactions to effect delivery of a government security pursuant to a futures contract;

(2) Exchange of futures for physicals transactions with (i) a government securities broker or government securities dealer that has registered with the

Commission or filed notice pursuant to section 15C(a) of the Act or (ii) a CFTC-regulated person;

(3) Transactions (including repurchase agreements and reverse repurchase agreements) involving segregated customer funds and securities or funds and securities held by a clearing organization with (i) a government securities broker or government securities dealer that has registered with the Commission of filed notice pursuant to section 15C(a) of the Act or (ii) a bank;

(4) Transactions for risk reduction or arbitrage of existing or contemporaneously created positions in futures or options on futures with (i) a government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to section 15C(a) of the Act or (ii) a CFTC-regulated person;

(5) Repurchase and reverse repurchase agreement transactions between a futures commission merchant acting in a proprietary capacity and another CFTC-regulated person acting in a proprietary capacity and contemporaneous offsetting transactions between such a futures commission merchant and (i) a government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to section 15C(a) of the Act, (ii) a bank, or (iii) a CFTC-regulated person acting in a proprietary capacity; and

(6) Any transaction or transactions that the Commission exempts, either unconditionally or on specified terms and conditions, as incidental to the futures related business of a specified CFTC-regulated person, a specified category of CFTC-regulated persons, or CFTC-regulated persons generally.

(c) *Definitions*—(1) *Segregated customer funds* means funds subject to CFTC segregation requirements.

(2) *Futures* and *futures contracts* means contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market designated by the CFTC or traded on or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

(3) *Options on futures* means puts or calls on a futures contract traded on or

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subject to the rules of a contract market designated by the CFTC or traded on or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

[52 FR 27970, July 24, 1987]

§ 240.3a51-1 Definition of “penny stock”.

For purposes of section 3(a)(51) of the Act, the term “penny stock” shall mean any equity security other than a security:

(a) That is an NMS stock, as defined in § 242.600(b)(55) of this chapter, provided that:

(1) The security is registered, or approved for registration upon notice of issuance, on a national securities exchange that has been continuously registered as a national securities exchange since April 20, 1992 (the date of the adoption of Rule 3a51-1 (§ 240.3a51-1) by the Commission); and the national securities exchange has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on that exchange on January 8, 2004; or

(2) The security is registered, or approved for registration upon notice of issuance, on a national securities exchange, or is listed, or approved for listing upon notice of issuance on, an automated quotation system sponsored by a registered national securities association, that:

(i) Has established initial listing standards that meet or exceed the following criteria:

(A) The issuer shall have:

(1) Stockholders’ equity of \$5,000,000;

(2) Market value of listed securities of \$50 million for 90 consecutive days prior to applying for the listing (market value means the closing bid price multiplied by the number of securities listed); or

(3) Net income of \$750,000 (excluding non-recurring items) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;

(B) The issuer shall have an operating history of at least one year or a market value of listed securities of \$50 million (market value means the clos-

ing bid price multiplied by the number of securities listed);

(C) The issuer’s stock, common or preferred, shall have a minimum bid price of \$4 per share;

(D) In the case of common stock, there shall be at least 300 round lot holders of the security (a round lot holder means a holder of a normal unit of trading);

(E) In the case of common stock, there shall be at least 1,000,000 publicly held shares and such shares shall have a market value of at least \$5 million (market value means the closing bid price multiplied by number of publicly held shares, and shares held directly or indirectly by an officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held);

(F) In the case of a convertible debt security, there shall be a principal amount outstanding of at least \$10 million;

(G) In the case of rights and warrants, there shall be at least 100,000 issued and the underlying security shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraph (a) or (e) of this section;

(H) In the case of put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the company’s common stock, at a specified price until a specified period of time), there shall be at least 100,000 issued and the underlying security shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraph (a) or (e) of this section;

(I) In the case of units (that is, two or more securities traded together), all component parts shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraph (a) or (e) of this section; and