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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(35) 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

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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.

(l) *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; 77 FR 66344, Nov. 2, 2012]

### §41.2 Required records.

A designated contract market that trades a security index or security futures product shall maintain in accordance with the requirements of §1.31 of this chapter 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.

[77 FR 66344, Nov. 2, 2012]

### §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 Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, if in paper form, or to [tm@cftc.gov](mailto:tm@cftc.gov) if submitted via electronic mail.

(e) The Commission may, in its sole discretion, grant the application, deny

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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; 78 FR 22419, Apr. 16, 2013]

§§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(35)(B) of the Act (7 U.S.C. 1a(35)(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 depositary shares.

(b) *Dollar value of ADTV.* (1) For purposes of section 1a(35)(A) and (B) of the Act (7 U.S.C. 1a(35)(A) and (B)):

(i)(A) The method to be used to determine the dollar value of ADTV of a security 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 security shall include the value of all reported transactions for such security and for any depositary share that represents such security.

(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(35)(B)(III)(cc) of the Act (7 U.S.C. 1a(35)(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(35)(B)(III)(aa) of the Act (7 U.S.C. 1a(35)(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

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(35)(A)(iv) of the Act (7 U.S.C. 1a(35)(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,

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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.

[66 FR 44511, Aug. 23, 2001, as amended at 70 FR 43750, July 29, 2005; 77 FR 66344, Nov. 2, 2012]

### §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 or foreign board of trade is not a narrow-based security index under section 1a(35) of the Act (7 U.S.C. 1a(35)) for the first 30 days of trading, if:

(1) Such index would not have been a narrow-based security index on each trading day of the preceding 6 full calendar months with respect to a date no earlier than 30 days prior to the commencement of trading of such contract;

(2) On each trading day of the preceding 6 full calendar months with respect to a date no earlier than 30 days prior to the commencement of trading such contract:

(i) Such index had more than 9 component securities;

(ii) No component security in such index comprised more than 30 percent of the index's weighting;

(iii) The 5 highest weighted component securities in such index did not comprise, in the aggregate, more than 60 percent of the index's weighting; and

(iv) The dollar value of the trading volume of the lowest weighted 25% of such index was not less than \$50 million (or in the case of an index with 15 or more component securities, \$30 million); or

(3) On each trading day of the 6 full calendar months preceding a date no earlier than 30 days prior to the commencement of trading such contract:

(i) Such index had at least 9 component securities;

(ii) No component security in such index comprised more than 30 percent of the index's weighting; and

(iii) Each component security in such index was:

(A) Registered pursuant to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78) or was a depositary share representing a security registered pursuant to Section 12 of the Securities Exchange Act of 1934;

(B) 1 of 750 securities with the largest market capitalization that day; and

(C) 1 of 675 securities with the largest dollar value of trading volume that day.

(b) An index that is not a narrow-based security index for the first 30 days of trading pursuant to paragraph (a) of this section, shall become a narrow-based security index if such index has been a narrow-based security index for more than 45 business days over 3 consecutive calendar months.

(c) An index that becomes a narrow-based security index solely because it was a narrow-based security index for

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more than 45 business days over 3 consecutive calendar months pursuant to paragraph (b) of this section shall not be a narrow-based security index for the following 3 calendar months.

(d) *Definitions.* For purposes of this section:

(1) *Market capitalization* has the same meaning as in §41.11(d)(6) of this chapter.

(2) *Dollar value of trading volume* of a security on a particular day is the value in U.S. dollars of all reported transactions in such security on that day. If the value of reported transactions used in calculating dollar value of trading volume is reported in a currency other than U.S. dollars, the total value of each day's transactions 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.

(3) *Lowest weighted 25% of an index* has the same meaning as in §41.11(d)(5) of this chapter.

(4) *Preceding 6 full calendar months* has the same meaning as in §41.11(d)(8) of this chapter.

(5) *Reported transaction* has the same meaning as in §41.11(d)(10) of this chapter.

[66 FR 44511, Aug. 23, 2001, as amended at 77 FR 66344, Nov. 2, 2012]

### **§41.13 Futures contracts on security indexes trading on or subject to the rules of a foreign board of trade.**

When a contract of sale for future delivery on a security index is traded on or subject to the rules of a foreign board of trade, such index shall not be a narrow-based security index if it would not be a narrow-based security index if a futures contract on such index were traded on a designated contract market.

[77 FR 66344, Nov. 2, 2012]

### **§41.14 Transition period for indexes that cease being narrow-based security indexes.**

(a) Forty-five day tolerance provision. An index that is a narrow-based security index that becomes a broad-based security index for no more than 45 business days over 3 consecutive cal-

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endar months shall be a narrow-based security index.

(b) Transition period for indexes that cease being narrow-based security indexes for more than forty-five days. An index that is a narrow-based security index that becomes a broad-based security index for more than 45 business days over 3 consecutive calendar months shall continue to be a narrow-based security index for the following 3 calendar months.

(c) Trading in months with open interest following transition period. After the transition period provided for in paragraph (b) of this section ends, a national securities exchange may continue to trade only in those months in the security futures product that had open interest on the date the transition period ended.

(d) Definition of calendar month. Calendar month means, with respect to a particular day, the period of time beginning on a calendar date and ending during another month on a day prior to such date.

### **§41.15 Exclusion from definition of narrow-based security index for indexes composed of debt securities.**

(a) An index is not a narrow-based security index if:

(1)(i) Each of the securities of an issuer included in the index is a security, as defined in section 2(a)(1) of the Securities Act of 1933 and section 3(a)(10) of the Securities Exchange Act of 1934 and the respective rules promulgated thereunder, that is a note, bond, debenture, or evidence of indebtedness;

(ii) None of the securities of an issuer included in the index is an equity security, as defined in section 3(a)(11) of the Securities Exchange Act of 1934 and the rules promulgated thereunder;

(iii) The index is comprised of more than nine securities that are issued by more than nine non-affiliated issuers;

(iv) The securities of any issuer included in the index do not comprise more than 30 percent of the index's weighting;

(v) The securities of any five non-affiliated issuers included in the index do not comprise more than 60 percent of the index's weighting;

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(vi) Except as provided in paragraph (a)(1)(viii) of this section, for each security of an issuer included in the index one of the following criteria is satisfied:

(A) The issuer of the security is required to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;

(B) The issuer of the security has a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more;

(C) The issuer of the security has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least \$1 billion;

(D) The security is an exempted security as defined in section 3(a)(12) of the Securities Exchange Act of 1934 and the rules promulgated thereunder; or

(E) The issuer of the security is a government of a foreign country or a political subdivision of a foreign country; and

(vii) Except as provided in paragraph (a)(1)(viii) of this section, for each security of an issuer included in the index one of the following criteria is satisfied:

(A) The security has a total remaining principal amount of at least \$250,000,000; or

(B) The security is a municipal security (as defined in section 3(a)(29) of the Securities Exchange Act of 1934 and the rules promulgated thereunder) that has a total remaining principal amount of at least \$200,000,000 and the issuer of such municipal security has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least \$1 billion; and

(viii) Paragraphs (a)(1)(vi) and (a)(1)(vii) of this section will not apply to securities of an issuer included in the index if:

(A) All securities of such issuer included in the index represent less than five percent of the index's weighting; and

(B) Securities comprising at least 80 percent of the index's weighting satisfy the provisions of paragraphs (a)(1)(vi) and (a)(1)(vii) of this section.

(2)(i) The index includes exempted securities, other than municipal securities as defined in section 3(a)(29) of the Securities Exchange Act of 1934 and the rules promulgated thereunder, that are:

(A) Notes, bonds, debentures, or evidences of indebtedness; and

(B) Not equity securities, as defined in section 3(a)(11) of the Securities Exchange Act of 1934 and the rules promulgated thereunder; and

(ii) Without taking into account any portion of the index composed of such exempted securities, other than municipal securities, the remaining portion of the index would not be a narrow-based security index meeting all the conditions under paragraph (a)(1) of this section.

(b) For purposes of this section:

(1) An issuer is affiliated with another issuer if it controls, is controlled by, or is under common control with, that issuer.

(2) For purposes of this section, "control" means ownership of 20 percent or more of an issuer's equity, or the ability to direct the voting of 20 percent or more of the issuer's voting equity.

(3) The term "issuer" includes a single issuer or group of affiliated issuers.

[71 FR 39541, July 13, 2006]

### Subpart C—Requirements and Standards for Listing Security Futures Products

SOURCE: 66 FR 55083, Nov. 1, 2001, unless otherwise noted.

#### §41.21 Requirements for underlying securities.

(a) *Security futures products based on a single security.* A futures contract on a single security is eligible to be traded as a security futures product only if:

(1) The underlying security is registered pursuant to section 12 of the Securities Exchange Act of 1934;

(2) The underlying security is:

(i) Common stock,

(ii) Such other equity security as the Commission and the SEC jointly deem appropriate, or

(iii) A note, bond, debenture, or evidence of indebtedness; and

(3) The underlying security conforms with the listing standards for the security futures product that the designated contract market has filed with the SEC under section 19(b) of the Securities Exchange Act of 1934.

(b) *Security futures product based on two or more securities.* A futures contract on an index of two or more securities is eligible to be traded as a security futures product only if:

(1) The index is a narrow-based security index as defined in section 1a(35) of the Act;

(2) The securities in the index are registered pursuant to section 12 of the Securities Exchange Act of 1934;

(3) The securities in the index are:

(i) Common stock,

(ii) Such other equity securities as the Commission and the SEC jointly deem appropriate, or

(iii) A note, bond, debenture, or evidence of indebtedness; and

(4) The index conforms with the listing standards for the security futures product that the designated contract market has filed with the SEC under section 19(b) of the Securities Exchange Act of 1934.

[66 FR 55083, Nov. 1, 2001, as amended at 71 FR 39542, July 13, 2006; 77 FR 66344, Nov. 2, 2012]

**§ 41.22 Required certifications.**

It shall be unlawful for a designated contract market to list for trading or execution a security futures product unless the designated contract market has provided the Commission with a certification that the specific security futures product or products and the designated contract market meet, as applicable, the following criteria:

(a) The underlying security or securities satisfy the requirements of § 41.21;

(b) If the security futures product is not cash settled, arrangements are in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 for the payment and delivery of the securities underlying the security futures product;

(c) Common clearing. [Reserved]

(d) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable

to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder, may solicit, accept any order for, or otherwise deal in any transaction in or in connection with security futures products;

(e) If the board of trade is a designated contract market pursuant to section 5 of the Act, dual trading in these security futures products is restricted in accordance with § 41.27;

(f) Trading in the security futures products is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities, consistent with the conditions for trading of § 41.25;

(g) Procedures are in place for coordinated surveillance among the board of trade, any market on which any security underlying a security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading. A board of trade that is an alternative trading system does not need to make this certification, provided that:

(1) The alternative trading system is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934; and

(2) The national securities association or national securities exchange of which the alternative trading system is a member has in place such procedures;

(h) An audit trail is in place to facilitate coordinated surveillance among the board of trade, any market on which any security underlying a security futures product is traded, and any market on which any related security is traded. A board of trade that is an alternative trading system does not need to make this certification, provided that:



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(1) The alternative trading system is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934; and

(2) The national securities association or national securities exchange of which the alternative trading system is a member has in place such procedures;

(i) Procedures are in place to coordinate regulatory trading halts between the board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded. A board of trade that is an alternative trading system does not need to make this certification, provided that:

(1) The alternative trading system is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934; and

(2) The national securities association or national securities exchange of which the alternative trading system is a member has in place such procedures; and

(j) The margin requirements for the security futures product will comply with the provisions specified in §41.43 through §41.48.

[66 FR 44511, Aug. 23, 2001, as amended at 77 FR 66344, Nov. 2, 2012]

### §41.23 Listing of security futures products for trading.

(a) *Initial listing of products for trading.* To list new security futures products for trading, a designated contract market shall submit to the Commission at its Washington, DC headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the initiation of trading, a filing that:

(1) Is labeled “Listing of Security Futures Product;”

(2) Includes a copy of the product’s rules, including its terms and conditions;

(3) Includes the certifications required by §41.22;

(4) Includes a certification that the terms and conditions of the contract comply with the additional conditions for trading of §41.25;

(5) If the board of trade is a designated contract market pursuant to section 5 of the Act, it includes a certification that the security futures product complies with the Act and rules thereunder; and

(6) Includes a copy of the submission cover sheet in accordance with the instructions in appendix D of part 40.

(7) Includes a request for confidential treatment as permitted under the procedures of §40.8.

(b) *Voluntary submission of security futures products for Commission approval.* A designated contract market may request that the Commission approve any security futures product under the procedures of §40.5 of this chapter, *provided however*, that the registered entity shall include the certification required by §41.22 with its submission under §40.5 of this chapter. Notice designated contract markets may not request Commission approval of security futures products.

[66 FR 55083, Nov. 1, 2001, as amended at 69 FR 67507, Nov. 18, 2004; 74 FR 17394, Apr. 15, 2009; 77 FR 66344, Nov. 2, 2012]

### §41.24 Rule amendments to security futures products.

(a) *Self-certification of rules and rule amendments by designated contract markets and registered derivatives clearing organizations.* A designated contract market or registered derivatives clearing organization may implement any new rule or rule amendment relating to a security futures product by submitting to the Commission at its Washington, DC headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the implementation of the rule or rule amendment, a filing that:

(1) Is labeled “Security Futures Product Rule Submission;”

(2) Includes a copy of the new rule or rule amendment;

(3) Includes a certification that the designated contract market or registered derivatives clearing organization has filed the rule or rule amendment with the Securities and Exchange Commission, if such a filing is required;

(4) If the board of trade is a designated contract market pursuant to section 5 of the Act or is a registered derivatives clearing organization pursuant to section 5b of the Act, it includes the documents and certifications required to be filed with the Commission pursuant to § 40.6 of this chapter, including a certification that the security futures product complies with the Act and rules thereunder; and

(5) Includes a copy of the submission cover sheet in accordance with the instructions in appendix D of part 40.

(6) Includes a request for confidential treatment as permitted under the procedures of § 40.8.

(b) *Voluntary submission of rules for Commission review and approval.* A designated contract market or a registered derivatives clearing organization clearing security futures products may request that the Commission approve any rule or proposed rule or rule amendment relating to a security futures product under the procedures of § 40.5 of this chapter, *provided however*, that the registered entity shall include the certifications required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of rules.

[66 FR 55083, Nov. 1, 2001, as amended at 69 FR 67507, Nov. 18, 2004; 74 FR 17394, Apr. 15, 2009; 77 FR 66344, Nov. 2, 2012]

**§ 41.25 Additional conditions for trading for security futures products.**

(a) *Definitions.* For purposes of this section:

*Estimated deliverable supply* means the quantity of the security underlying a security futures product that reasonably can be expected to be readily available to short traders and salable by long traders at its market value in normal cash marketing channels during the specified delivery period. For guidance on estimating deliverable supply, designated contract markets

may refer to appendix A of this subpart.

*Same side of the market* means the aggregate of long positions in physically-delivered security futures products and cash-settled security futures products, in the same security, and, separately, the aggregate of short positions in physically-delivered security futures products and cash-settled security futures products, in the same security.

(b) *Common provisions—(1) Reporting of data.* The designated contract market shall comply with part 16 of this chapter requiring the daily reporting of market data.

(2) *Regulatory trading halts.* The rules of a designated contract market that lists or trades one or more security futures products must include the following provisions:

(i) Trading of a security futures product based on a single security shall be halted at all times that a regulatory halt has been instituted for the underlying security; and

(ii) Trading of a security futures product based on a narrow-based security index shall be halted at all times that a regulatory halt has been instituted for one or more underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index.

(3) *Speculative position limits.* A designated contract market shall have rules in place establishing position limits or position accountability procedures for the expiring futures contract month as specified in this paragraph (b)(3).

(i) *Limits for equity security futures products.* For a security futures product on a single equity security, including a security futures product on an underlying security that represents ownership in a group of securities, *e.g.*, an exchange traded fund, a designated contract market shall adopt a position limit no greater than 25,000 100-share contracts (or the equivalent if the contract size is different than 100 shares), either net or on the same side of the market, applicable to positions held during the last three trading days of an expiring contract month; except where:

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(A) For a security futures product on a single equity security where the estimated deliverable supply of the underlying security exceeds 20 million shares, a designated contract market may adopt, if appropriate in light of the liquidity of trading in the underlying security, a position limit no greater than the equivalent of 12.5 percent of the estimated deliverable supply of the underlying security, either net or on the same side of the market, applicable to positions held during the last three trading days of an expiring contract month; or

(B) For a security futures product on a single equity security where the six-month total trading volume in the underlying security exceeds 2.5 billion shares and there are more than 40 million shares of estimated deliverable supply, a designated contract market may adopt a position accountability rule in lieu of a position limit, either net or on the same side of the market, applicable to positions held during the last three trading days of an expiring contract month. Upon request by a designated contract market, traders who hold positions greater than 25,000 100-share contracts (or the equivalent if the contract size is different than 100 shares), or such lower level specified pursuant to the rules of the designated contract market, must provide information to the designated contract market and consent to halt increasing their positions when so ordered by the designated contract market.

(ii) *Limits for physically-delivered basket equity security futures products.* For a physically-delivered security futures product on more than one equity security, e.g., a basket of deliverable securities, a designated contract market shall adopt a position limit, either net or on the same side of the market, applicable to positions held during the last three trading days of an expiring contract month and the criteria in paragraph (b)(3)(i) of this section must apply to the underlying security with the lowest estimated deliverable supply. For a physically-delivered security futures product on more than one equity security with a contract size different than 100 shares per underlying security, an appropriate adjustment to the limit must be made. If each of the

underlying equity securities in the basket of deliverable securities is eligible for a position accountability level under paragraph (b)(3)(i)(B) of this section, then the security futures product is eligible for a position accountability level in lieu of position limits.

(iii) *Limits for cash-settled equity index security futures products.* For a security futures product cash settled to a narrow-based security index of equity securities, a designated contract market shall adopt a position limit, either net or on the same side of the market, applicable to positions held during the last three trading days of an expiring contract month. For guidance on setting limits for a cash-settled equity index security futures product, designated contract markets may refer to paragraph (b) of appendix A to this subpart.

(iv) *Limits for debt security futures products.* For a security futures product on one or more debt securities, a designated contract market shall adopt a position limit, either net or on the same side of the market, applicable to positions held during the last three trading days of an expiring contract month. For guidance on setting limits for a debt security futures product, designated contract markets may refer to paragraph (c) of appendix A to this subpart.

(v) *Required minimum position limit time period.* For position limits required under this section where the security futures product permits delivery before the termination of trading, a designated contract market shall apply such position limits for a period beginning no later than the first day that long position holders may be assigned delivery notices, if such period is longer than the last three trading days of an expiring contract month.

(vi) *Requirements for resetting levels of position limits.* A designated contract market shall calculate estimated deliverable supply and six-month total trading volume no less frequently than semi-annually.

(A) If the estimated deliverable supply data supports a lower speculative limit for a security futures product, then the designated contract market shall lower the position limit for that security futures product pursuant to

the submission requirements of §41.24. If the data require imposition of a reduced position limit for a security futures product, the designated contract market may permit any trader holding a position in compliance with the previous position limit, but in excess of the reduced limit, to maintain such position through the expiration of the security futures contract; provided, that the designated contract market does not find that the position poses a threat to the orderly expiration of such contract.

(B) If the estimated deliverable supply or six-month total trading volume data no longer supports a position accountability rule in lieu of a position limit for a security futures product, then the designated contract market shall establish a position limit for that security futures product pursuant to the submission requirements of §41.24.

(C) If the estimated deliverable supply data supports a higher speculative limit for a security futures product, as provided under paragraph (b)(3)(i)(A) of this section, then the designated contract market may raise the position limit for that security futures product pursuant to the submission requirements of §41.24.

(vii) *Restriction on netting of positions.* If the designated contract market lists both physically-delivered contracts and cash-settled contracts in the same security, it shall not permit netting of positions in the physically-delivered contract with that of the cash-settled contract for purposes of determining applicability of position limits.

(c) *Final settlement prices for security futures products.* (1) The final settlement price of a cash-settled security futures product must fairly reflect the opening price of the underlying security or securities;

(2) Notwithstanding paragraph (c)(1) of this section, if an opening price for one or more securities underlying a security futures product is not readily available, the final settlement price of the security futures product shall fairly reflect:

(i) The price of the underlying security or securities during the most recent regular trading session for such security or securities; or

(ii) The next available opening price of the underlying security or securities.

(3) Notwithstanding paragraph (c)(1) or (2) of this section, if a derivatives clearing organization registered under section 5b of the Act or a clearing agency exempt from registration pursuant to section 5b(a)(2) of the Act, to which the final settlement price of a security futures product is or would be reported determines, pursuant to its rules, that such final settlement price is not consistent with the protection of customers and the public interest, taking into account such factors as fairness to buyers and sellers of the affected security futures product, the maintenance of a fair and orderly market in such security futures product, and consistency of interpretation and practice, the clearing organization shall have the authority to determine, under its rules, a final settlement price for such security futures product.

(d) *Special requirements for physical delivery contracts.* For security futures products settled by actual delivery of the underlying security or securities, payment and delivery of the underlying security or securities must be effected through a clearing agency that is registered pursuant to section 17A of the Securities Exchange Act of 1934.

(e) *Exemptions.* The Commission may exempt a designated contract market from the provisions of paragraphs (b)(2) and (c) of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of customers. An exemption granted pursuant to this paragraph (e) shall not operate as an exemption from any Securities and Exchange Commission rule. Any exemption that may be required from such rules must be obtained separately from the Securities and Exchange Commission.

[66 FR 55083, Nov. 1, 2001, as amended at 67 FR 36761, May 24, 2002; 77 FR 66345, Nov. 2, 2012; 84 FR 51021, Sept. 27, 2019]

**§41.27 Prohibition of dual trading in security futures products by floor brokers.**

(a) *Definitions.* For purposes of this section:

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(1) Trading session means hours during which a designated contract market is scheduled to trade continuously during a trading day, as set forth in its rules, including any related post settlement trading session. A designated contract market may have more than one trading session during a trading day.

(2) Member shall have the meaning set forth in section 1a(24) of the Act.

(3) Broker association includes two or more designated contract market members with floor trading privileges of whom at least one is acting as a floor broker who:

(i) Engage in floor brokerage activity on behalf of the same employer;

(ii) Have an employer and employee relationship which relates to floor brokerage activity;

(iii) Share profits and losses associated with their brokerage or trading activity; or

(iv) Regularly share a deck of orders.

(4) Customer means an account owner for which a trade is executed other than:

(i) An account in which such floor broker has any interest;

(ii) An account for which a floor broker has discretion;

(iii) An account controlled by a person with whom a floor broker has a relationship through membership in a broker association;

(iv) A house account of the floor broker's clearing member; or

(v) An account for another member present on the floor of a designated contract market or an account controlled by such other member.

(5) Dual trading means the execution of customer orders by a floor broker through open outcry during the same trading session in which the floor broker executes directly or by initiating and passing to another member, either through open outcry or through a trading system that electronically matches bids and offers pursuant to a predetermined algorithm, a transaction for the same security futures product on the same designated contract market for an account described in paragraphs (a)(4)(i) through (v) of this section.

(b) *Dual trading prohibition.* (1) No floor broker shall engage in dual trad-

ing in a security futures product on a designated contract market, except as otherwise provided under paragraphs (d), (e), and (f) of this section.

(2) A designated contract market operating an electronic market or electronic trading system that provides market participants with a time or place advantage or the ability to override a predetermined algorithm must submit an appropriate rule proposal to the Commission consistent with the procedures set forth in §40.5. The proposed rule must prohibit electronic market participants with a time or place advantage or the ability to override a predetermined algorithm from trading a security futures product for accounts in which these same participants have any interest during the same trading session that they also trade the same security futures product for other accounts. This paragraph, however, is not applicable with respect to execution priorities or quantity guarantees granted to market makers who perform that function, or to market participants who receive execution priorities based on price improvement activity, in accordance with the rules governing the designated contract market.

(c) *Rules prohibiting dual trading—*(1) *Designated contract markets.* Prior to listing a security futures product for trading on a trading floor where bids and offers are executed through open outcry, a designated contract market:

(i) Must submit to the Commission in accordance with §40.6, a rule prohibiting dual trading, together with a written certification that the rule complies with the Act and the regulations thereunder, including this section; or

(ii) Must obtain Commission approval of such rule pursuant to §40.5.

(2) [Reserved]

(d) *Specific permitted exceptions.* Notwithstanding the applicability of a dual trading prohibition under paragraph (b) of this section, dual trading may be permitted on a designated contract market pursuant to one or more of the following specific exceptions:

(1) *Correction of errors.* To offset trading errors resulting from the execution of customer orders, *provided*, that the

floor broker must liquidate the position in his or her personal error account resulting from that error through open outcry or through a trading system that electronically matches bids and offers as soon as practicable, but, except as provided herein, not later than the close of business on the business day following the discovery of error. In the event that a floor broker is unable to offset the error trade because the daily price fluctuation limit is reached, a trading halt is imposed by the designated contract market, or an emergency is declared pursuant to the rules of the designated contract market, the floor broker must liquidate the position in his or her personal error account resulting from that error as soon as practicable thereafter.

(2) *Customer consent.* To permit a customer to designate in writing not less than once annually a specifically identified floor broker to dual trade while executing orders for such customer's account. An account controller acting pursuant to a power of attorney may designate a dual trading broker on behalf of its customer, provided, that the customer explicitly grants in writing to the individual account controller the authority to select a dual trading broker.

(3) *Spread transactions.* To permit a broker who unsuccessfully attempts to leg into a spread transaction for a customer to take the executed leg into his or her personal account and to offset such position, provided, that a record is prepared and maintained to demonstrate that the customer order was for a spread.

(4) *Market emergencies.* To address emergency market conditions resulting in a temporary emergency action as determined by a designated contract market.

(e) *Rules permitting specific exceptions—(1) Designated contract markets.* Prior to permitting dual trading under any of the exceptions provided in paragraphs (d)(1)–(4) of this section, a designated contract market:

(i) Must submit to the Commission in accordance with §40.6, a rule permitting the exception(s), together with a written certification that the rule complies with the Act and the regulations thereunder, including this section; or

(ii) Must obtain Commission approval of such rule pursuant to §40.5.

(2) [Reserved]

(f) *Unique or special characteristics of agreements, contracts or transactions, or of designated contract markets.* Notwithstanding the applicability of a dual trading prohibition under paragraph (b) of this section, dual trading may be permitted on a designated contract market to address unique or special characteristics of agreements, contracts, or transactions, or of the designated contract market as provided herein. Any rule of a designated contract market that would permit dual trading when it would otherwise be prohibited, based on a unique or special characteristic of agreements, contracts, or transactions, or of the designated contract market must be submitted to the Commission for prior approval under the procedures set forth in §40.5. The rule submission must include a detailed demonstration of why an exception is warranted.

[67 FR 11227, Mar. 13, 2002, as amended at 77 FR 66345, Nov. 2, 2012]

#### APPENDIX A TO SUBPART C OF PART 41— GUIDANCE ON AND ACCEPTABLE PRACTICES FOR POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SE- CURITY FUTURES PRODUCTS

(a) *Guidance for estimating deliverable supply.* (1) For an equity security, deliverable supply should be no greater than the free float of the security.

(2) For a debt security, deliverable supply should not include securities that are committed for long-term agreements (e.g., closed-end investment companies, structured products, or similar securities).

(3) Further guidance on estimating deliverable supply, including consideration of whether the underlying security is readily available, is found in appendix C to part 38 of this chapter.

(b) *Guidance and acceptable practices for setting limits on cash-settled equity index security futures products—(1) Guidance for setting limits on cash-settled equity index security futures products.* For a security futures product cash settled to a narrow-based security index of equity securities, a designated contract market:

(i) May set the level of a position limit to that of a similar narrow-based equity index option listed on a national security exchange or association; or

(ii) Should consider the deliverable supply of equity securities underlying the index,

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and should consider the index weighting and contract multiplier.

(2) *Acceptable practices for setting limits on cash-settled equity index security futures products.* For a security futures product cash settled to a narrow-based security index of equity securities weighted by the number of shares outstanding, a designated contract market may set a position limit as follows: First, determine the limit on a security futures product on each underlying equity security pursuant to §41.25(b)(3)(i); second, multiply each such limit by the ratio of the 100-share contract size and the shares of the equity securities in the index; and third, determine the minimum level from step two and set the limit to that level, given a contract size of one U.S. dollar times the index, or for a larger contract size, reduce the level proportionately. If under these procedures each of the equity securities underlying the index is determined to be eligible for position accountability levels, the security futures product on the index itself is eligible for a position accountability level.

(c) *Guidance and acceptable practices for setting limits on debt security futures products—(1) Guidance for setting limits on debt security futures products.* A designated contract market should set the level of a position limit to no greater than the equivalent of 12.5 percent of the par value of the estimated deliverable supply of the underlying debt security. For a security futures product on more than one debt security, the limit should be based on the underlying debt security with the lowest estimated deliverable supply.

(2) *Acceptable practices for setting limits on debt security futures products.* [Reserved]

(d) *Guidance on position accountability.* A designated contract market may adopt a position accountability rule for any security futures product, in addition to a position limit rule required or adopted under §41.25. Upon request by the designated contract market, traders who hold positions, either net or on the same side of the market, greater than such level specified pursuant to the rules of the designated contract market must provide information to the designated contract market and consent to halt increasing their positions when so ordered by the designated contract market.

(e) *Guidance on exemptions from position limits.* A designated contract market may approve exemptions from these position limits pursuant to rules that are consistent with §150.5 of this chapter, or to rules that are consistent with rules of a national securities exchange or association regarding exemptions to securities option position limits or exercise limits.

[84 FR 51022, Sept. 27, 2019]

## Subpart D—Notice-Designated Contract Markets in Security Futures Products

SOURCE: 66 FR 44965, Aug. 27, 2001, unless otherwise noted.

### §41.31 Notice-designation requirements.

(a) Any board of trade that is a national securities exchange, a national securities association, or an alternative trading system, and that seeks to operate as a designated contract market in security futures products under section 5f of the Act, shall so notify the Commission. Such notification shall be filed with the Secretary of the Commission at its Washington, D.C. headquarters, in either electronic or hard copy form, shall be labeled as “Notice of Designation as a Contract Market in Security Futures Products,” and shall include:

(1) The name and address of the board of trade;

(2) The name and telephone number of a contact person designated to receive communications from the Commission on behalf of the board of trade;

(3) A description of the security futures products that the board of trade intends to make available for trading, including an identification of all facilities that would clear transactions in security futures products on behalf of the board of trade;

(4) A copy of the current rules of the board of trade; and

(5) A certification that the board of trade—

(i) Will not list or trade any contracts of sale for future delivery, except for security futures products;

(ii) Is registered with the Securities and Exchange Commission as a national securities exchange, national securities association, or alternative trading system, and such registration is not suspended pursuant to an order by the Securities and Exchange Commission;

(iii) Will meet the criteria specified in subclauses (I) through (XI) of section 2(a)(1)(D)(i) of the Act, except as otherwise provided in section 2(a)(1)(D)(vi) of the Act, for each specific security futures product that the board of trade intends to make available for trading;

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(iv) Will comply with the conditions for designation under this section and section 5f of the Act, including a specific representation by any alternative trading system that it is a member of a futures association registered under section 17 of the Act; and

(v) Will comply with the continuing obligations of regulation 41.32.

(b) A board of trade which files notice with the Commission under this section shall be deemed a designated contract market in security futures products upon the Commission's receipt of such notice. Accordingly, the Commission shall send prompt acknowledgment of receipt to the filer.

(c) Designation as a contract market in security futures products pursuant to this section shall be deemed suspended if the board of trade:

(1) Lists or trades any contracts of sale for future delivery, except for security futures products; or

(2) Has its registration as a national securities exchange, national securities association, or alternative trading system suspended pursuant to an order by the Securities and Exchange Commission.

### § 41.32 Continuing obligations.

(a)(1) A board of trade designated as a contract market in security futures products pursuant to § 41.31 of this chapter shall:

(i) Notify the Commission of any change in its regulatory status with the Securities and Exchange Commission or with a futures association registered under section 17 of the Act;

(ii) Comply with the filing requirements of section 2(a)(1)(D)(vii) of the Act each time the board of trade lists a security futures product for trading;

(iii) Provide the Commission with any new rules or rule amendments that relate to the trading of security futures products, including both operational rules and the terms and conditions of products listed for trading on the facility, promptly after final implementation of such rules or rule amendments; and

(iv) Upon request, file promptly with the Commission—

(A) Such information related to its business as a designated contract mar-

ket 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



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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;

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- (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)(1) 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 secu-

rity 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

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(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, and 18.05 of this chapter shall apply to security futures product transactions and positions in a futures account (as that term is defined in §1.3 of this chapter). The rules in the preceding sentence shall not apply to security futures product transactions and positions in a securities account (as that term is defined in §1.3 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 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 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, as amended at 83 FR 7997, Feb. 23, 2018; 86 FR 19421, Apr. 13, 2021]

### **§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

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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:

(1) 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 se-

curity 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(35)(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

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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.

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

(28) *Securities account* shall have the meaning provided in § 1.3 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

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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, or a contract market registered under section 5 of the Act or section 5f 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.

[67 FR 53171, Aug. 14, 2002, as amended at 77 FR 66346, Nov. 2, 2012; 83 FR 7997, Feb. 23, 2018]

### §41.44 General provisions.

(a) *Applicable margin rules.* Except to the extent inconsistent with this Regu-

lation (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

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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 ac-

count 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 fifteen (15) 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.

[67 FR 53171, Aug. 14, 2002, as amended at 85 FR 75146, Nov. 24, 2020]

### §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 account, 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



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(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:

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(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 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 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.

[67 FR 53171, Aug. 14, 2002, as amended at 77 FR 66346, Nov. 2, 2012]

**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 chapter X, 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 1026.220, which require that a customer identification program be adopted as part of the firm's Bank Secrecy Act compliance program.

[79 FR 2371, Jan. 14, 2014]

**PART 43—REAL-TIME PUBLIC REPORTING**

Sec.

43.1 Purpose, scope, and rules of construction.

43.2 Definitions.

43.3 Method and timing for real-time public reporting.

43.4 Swap transaction and pricing data to be publicly disseminated in real-time.

43.5 Time delays for public dissemination of swap transaction and pricing data.

43.6 Block trades and large notional off-facility swaps.