

## Commodity Futures Trading Commission

## §41.41

matter which has been delegated pursuant to paragraph (g) of this section; and

(2) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Market Oversight under paragraph (g) of this section.

[66 FR 44511, Aug. 23, 2001, as amended at 67 FR 62352, Oct. 7, 2002]

### §41.34 Exempt Provisions.

Any board of trade notice-designated as a contract market in security futures products pursuant to §41.31 also shall be exempt from:

(a) The following provisions of the Act, pursuant to section 5f(b)(1) of the Act:

- (1) Section 4(c)(c);
- (2) Section 4(c)(e);
- (3) Section 4(c)(g);
- (4) Section 4j;
- (5) Section 5;
- (6) Section 5c;
- (7) Section 6a;
- (8) Section 8(d);
- (9) Section 9(f);
- (10) Section 16 and;

(b) The following provisions, pursuant to section 5f(b)(4) of the Act:

- (1) Section 6(a);
- (2) Part 38 of this chapter;
- (3) Part 40 of this chapter; and
- (4) Section 41.27.

[67 FR 11229, Mar. 13, 2002]

## Subpart E—Customer Accounts and Margin Requirements

SOURCE: 67 FR 53171, Aug. 14, 2002, unless otherwise noted.

### §41.41 Security futures products accounts.

(a) *Where security futures products may be held.* (1) A person registered with the Commission as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act (“CEA”) and registered with the Securities and Exchange Commission (“SEC”) as a broker or dealer pursuant to section 15(b)(1) of the Securities Exchange Act of 1934 (“Securities Exchange Act”) (“Full FCM/Full BD”) may hold all of a customer’s security futures products in

a futures account, all of a customer’s security futures products in a securities account, or some of a customer’s security futures products in a futures account and other security futures products of the same customer in a securities account. A person registered with the Commission as a futures commission merchant pursuant to section 4f(a)(2) of the CEA (a notice-registered FCM) may hold a customer’s security futures products only in a securities account. A person registered with the SEC as a broker or dealer pursuant to section 15(b)(11) of the Securities Exchange Act (a notice-registered broker-dealer) may hold a customer’s security futures products only in a futures account.

(2) A Full FCM/Full BD shall establish written policies or procedures for determining whether customer security futures products will be placed in a futures account and/or a securities account and, if applicable, the process by which a customer may elect the type or types of account in which security 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

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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

(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, 18.05 and 190.06 of this chapter shall apply to security futures product transactions and positions in a futures account (as that term is defined in § 1.3(vv) 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(ww) 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(vv) 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(ww) 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]

### § 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