

## Commodity Futures Trading Commission

## §41.41

(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(f) An application for an exemptive order may be withdrawn by the applicant at any time, without explanation, by filing with the Secretary of the Commission a written request for withdrawal, signed by an authorized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;
- (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 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]