

**§41.21**

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(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 or registered derivatives transaction execution facility 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(25) 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 or registered derivatives transaction execution facility 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]

**§41.22 Required certifications.**

It shall be unlawful for a designated contract market or registered derivatives transaction execution facility to list for trading or execution a security futures product unless the designated contract market or registered derivatives transaction execution facility has

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provided the Commission with a certification that the specific security futures product or products and the designated contract market or registered derivatives transaction execution facility 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 or is a registered derivatives transaction execution facility pursuant to section 5a 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 alter-

native 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:

(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

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

### § 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 or registered derivatives transaction execution facility 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 or a registered derivatives transaction execution facility pursuant to section 5a 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 or registered derivatives transaction execution facility 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

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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]

### § 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) *Self-certification of rules by registered derivatives transaction execution facilities.* Notwithstanding § 37.7 of this chapter, a registered derivatives transaction execution facility may only implement a new rule or rule amendment relating to a security futures product if the registered derivatives transaction execution facility has certified the rule