§ 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 4(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 4(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 securities 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, 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 4(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.

§ 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 5(b)(1) of the Act:

(1) Section 4(c)(c);
(2) Section 4(c)(e);
(3) Section 4(c)(g);
(4) Section 4;
(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 5(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.
§ 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") for the purpose of (1) defining the 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.

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