Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at Pelham Lake, VA. An Area Navigation (RNAV) Point in Space Approach has been developed for Culpeper Memorial Hospital Heliport located in the vicinity of Pelham Lake, VA. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the approach. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration order 7400.9H dated September 1, 2000, and effective September 16, 2000, is proposed to be amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth*

* * * * *

**AEA VA E5, Pelham Lake, VA (NEW)**

Culpeper Memorial Hospital Heliport
(Lat. 38° 27′ 54″N—long. 78° 01′ 06″W)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of Culpepper Memorial Hospital Heliport.

* * * * *

Issued in Jamaica, New York on May 17, 2001.

**F. D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 01–13674 Filed 5–30–01; 8:45 am]

BILLING CODE 4910–13–M

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## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Parts 41 and 140

**RIN 3038–AB82**

## Designated Contract Markets in Security Futures Products: Notice-Designation Requirements, Continuing Obligations, Applications for Exemptive Orders, and Exempt Provisions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rulemaking and request for comment.

**SUMMARY:** The Commodity Futures Trading Commission today proposes new regulations which would provide notice procedures for a national securities exchange, a national securities association, or an alternative trading system to become a designated contract market in security futures products, in accordance with the Commodity Futures Modernization Act of 2000. The proposed regulations also would establish limited filing requirements for such notice-designated contract markets, in accordance with certain provisions of the Commodity Exchange Act, and would establish procedures permitting such notice-designated contract markets to apply for exemptive relief from any section of the Commodity Exchange Act or regulations thereunder, to the extent such an exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

**DATES:** Comments must be received by July 2, 2001.

**ADDRESSES:** Comments on the proposed rulemaking may be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile to (202) 418–5536 or by electronic mail to secretary@cftc.gov. Reference should be made to ''Designated Contract Markets in Security Futures Products.''

**FOR FURTHER INFORMATION CONTACT:** Joshua R. Marlow, Attorney-Advisor, or David P. Van Wagner, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5490, electronic mail: jmarlow@cftc.gov or dvanwagner@cftc.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 21, 2000, the Commodity Futures Modernization Act of 2000 (''CFMA'') was signed into law.[1] Among other things, the CFMA added a provision to the Commodity Exchange Act (''Act'') that permits the trading of security futures products under the shared jurisdiction of the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') and the Securities and Exchange Commission (''SEC'').[2] Under the amended law,

[1] Pub. L. 106–554, 114 Stat. 2763. The text of the CFMA may be accessed at http://www.cftc.gov/files/ogc/ogchr5660.pdf.

[2] *See* section 251(a)(2) of the CFMA. Previously, section 2(a)(1)(B)(v) of the Act had prohibited the trading of security futures products.

The term ''security futures product'' is defined in section 1a(32) of the Act to mean ''a security future or any put, call, straddle, option, or privilege on any security future.'' The term ''security future'' is defined in section 1a(31) of the Act and specifically

Continued

security futures products may be traded on any board of trade that is designated as a contract market by the Commission pursuant to section 5 of the Act, or that is registered with the Commission as a derivatives transaction execution facility (''DTF'') pursuant to section 5a of the Act.[3]

Alternatively, section 5f of the Act permits certain entities that are otherwise regulated by the SEC to be designated contract markets for the limited purpose of trading security futures products.[4] Specifically, any board of trade that is registered with the SEC as a national securities exchange pursuant to section 6(a) of the '34 Act, is registered with the SEC as a national securities association pursuant to section 15A(a) of the '34 Act, or is an alternative trading system (''ATS'') as defined by section 1a(1) of the Act shall be a designated contract market in security futures products (''SFPCM'') if:

(1) Such national securities exchange, national securities association, or alternative trading system lists or trades no other contracts of sale for future delivery, except for security futures products;

(2) Such national securities exchange, national securities association, or alternative trading system files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of customers; and

(3) The registration of such national securities exchange, national securities association, or alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission.[5]

The designation ''shall be effective contemporaneously with the submission of notice * * * to the Commission.''[6] Accordingly, the Commission is today proposing new regulation 41.31, which would establish notification procedures in accordance with Congress' mandate in section 5f(a)(2) of the Act.

In order to maintain such designation status with the Commission, an SFPCM would have to comply with proposed regulation 41.32, which would establish several, limited continuing obligations. These filing requirements, authorized by various recordkeeping and inspection provisions of the Act, would allow the Commission to meet its market oversight responsibilities.

Regulations 41.31 and 41.32 are proposed in a manner that the Commission believes is consistent with the intent of the CFMA. The CFMA defines a security futures product as both a ''security,'' for purposes of the '34 Act, and as a ''future,'' for purposes of the Commodity Exchange Act.[7] The practical consequence of this dual-definition is that boards of trade that are otherwise subject to the regulatory jurisdiction of only the SEC or the CFTC, but which seek to list security futures products for trading, might now be subject to both regulatory regimes. The CFMA attempts to resolve this potentially duplicative regulation by preserving the jurisdiction of an entity's primary regulator and reducing the jurisdiction of the other regulator. Accordingly, under new section 5f of the Act, a board of trade that is primarily regulated by the SEC and that seeks to list security futures products for trading is relieved from certain of the CFTC's otherwise applicable regulatory requirements. Likewise, under section 202 of the CFMA, a board of trade that is primarily regulated by the CFTC and that seeks to list security futures products for trading is relieved from certain of the SEC's otherwise applicable regulatory requirements. The Commission notes that, under the SEC proposal to implement sections 202 of the CFMA and 6(g) of the '34 Act,[8] a contract market designated under section 5 of the Act that notice-registers as a national securities exchange with the SEC in order to list security futures products for trading would be subject to more notice requirements and more periodic reporting with its non-primary regulator than a board of trade that notice-designates as an SFPCM with the CFTC. The Commission seeks comment from the public on this potential disparity. To what extent could these disparate regulatory regimes for notice-registrants create a competitive disadvantage for section 5 designated contract markets or section 5a DTFs which seek notice-registration as a national securities exchange pursuant to section 6(g) of the '34 Act? Are these differences consistent with the general intent of the CFMA to minimize the burden of shared jurisdiction?

Finally, section 5f(b)(4) of the Act permits the Commission to exempt SFPCMs from any provision of the Act or regulations thereunder, and requires that the Commission determine procedures which would allow SFPCMs to apply to the Commission for an exemption from any provision of the Act or regulations thereunder, ''to the extent (any) such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.''[9] Accordingly, the Commission proposes new regulation 41.33 to provide SFPCMs with an opportunity to request exemptive relief from unnecessary or unduly burdensome requirements. Responsibility for considering such requests would be delegated to the Directors of the Commission's Division of Trading and Markets and Division of Economic Analysis, jointly, pursuant to paragraph (g) of proposed regulation 41.33.[10] Moreover, the Commission proposes new regulation 41.34 to exempt all SFPCMs from section 6(a) of the Act.

## II. Proposed Amendments

### *A. Regulation 41.1—Definitions*

To implement the procedures identified in proposed regulations 41.31, 41.32, 41.33, and 41.34, the Commission proposes to establish regulation 41.1, which would contain six definitions: ''alternative trading system''; ''board of trade''; ''national securities association''; ''national securities exchange''; ''rule''; and ''security futures product.'' The terms ''alternative trading system,'' ''board of trade,'' and ''security futures product'' would have the same meanings as those terms have in section 1a of the Act. The terms ''national securities exchange'' and ''national securities association'' would have the same meanings as in the '34 Act. The definition of ''rule'' would be identical to the definition for that term in Commission regulation 1.41(a)(1).[11]

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excludes, among other things, ''excluded swap transactions'' (as defined in section 2(g) of the Act). Because the CFMA also provides that options on security futures cannot be traded until at least December 21, 2003, security futures are the only security futures products that may be available for trading before such date. *See* section 2(a)(1)(D)(iii)(II) of the Act.

[3] The CFMA prescribes certain dates before which trading in security futures products shall not commence. Specifically, no trading may occur prior to August 21, 2001, at which time principal-to-principal transactions between ''eligible contract participants'' may begin. Retail transactions in security futures products may not begin until December 21, 2001. (Both starting dates are conditioned upon the registration of a futures association as a national securities association under the Securities Exchange Act of 1934 (''34 Act'').) *See* section 202(a)(5) of the CFMA and section 6(g)(5) of the '34 Act.

[4] *See* section 252(a)(2) of the CFMA.

[5] Section 5f(a) of the Act.

[6] *Id.*

[7] *See* sections 101 and 201 of the CFMA.

[8] *See* 66 FR 26977 (May 15, 2001).

[9] Section 5f(b)(4)(A) of the Act.

[10] This proposed rulemaking specifies that SFPCM requests for exemption under proposed Commission regulation 41.33 would not be subject to the requirements of Commission regulation 140.99.

[11] Under the Commission's proposed regulatory reform rulemaking, Commission regulation 1.41(a)(1) would be deleted and replaced by Commission regulation 40.1(e). *See* 66 FR 14262 (Mar. 9, 2001). Should that proposal become final, regulation 41.1(e) would alternatively cross-

*B. Regulation 41.31—Notice-Designation*

The Commission proposes to establish procedures necessary for a board of trade operating as a national securities exchange, national securities association, or alternative trading system to receive designation as an SFPCM. This regulation is proposed pursuant to section 5f(a)(2) of the Act, which states that such designation may be obtained by a board of trade by filing ''written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of customers.''

The proposed content requirements of the notice relate to the Commission's abilities to maintain communication with a board of trade and to receive information about its operations, two goals that the Commission believes are ''necessary or appropriate in the public interest or for the protection of customers.'' Such notices would have to include: the name, address, and contact person of the board of trade; 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; a copy of the current rules of the board of trade; and five specific certifications by the board of trade derived from the requirements found in sections 5f and 2(a)(1)(D)(vii) of the Act.[12] If a board of trade previously filed documents with the SEC containing information which would satisfy any of these proposed informational requirements, the Commission would accept copies of such documents in lieu of the required information.

*C. Regulation 41.32—Continuing Obligations*

The Commission proposes regulation 41.32 in order to establish a mechanism to receive the following from an SFPCM:

(1) Notification of any change in its regulatory status with the SEC or with a futures association registered under section 17 of the Act;[13]

(2) A certification consistent with the requirements of section 2(a)(1)(D)(vii) of the Act each time the board of trade lists a new security futures product for trading;[14]

(3) Provision of a copy of any new rules or rule amendments that relate to the trading of security futures products, including any operational rules and the terms and conditions of any security futures products;[15]

(4) Upon request, information related to its business as a designated contract market in security futures products; and

(5) Upon request, a written demonstration, including supporting data, that the board of trade is in compliance with a specified provision of the Act or regulations thereunder.

This information would permit the Commission to carry out its various responsibilities under the Act and would ensure that an SFPCM continues to comply with the conditions of designation under section 5f(a) of the Act and proposed regulation 41.31.[16]

The Commission notes various recordkeeping and reporting provisions of the Act, applicable to all designated contract markets, which facilitate the Commission's general market oversight responsibilities and authorize the Commission to require this information. In particular, section 4g(b) of the Act requires that ''[e]very registered entity * * * maintain daily trading records * * * includ[ing] such information as the Commission shall prescribe by rule,'' and section 4g(d) of the Act continues, ''[d]aily trading records shall be maintained in a form suitable to the Commission. * * * Reports shall be made from the records maintained * * * in such form as the Commission may prescribe. * * * '' Moreover, sections 8(a)(1) and 2(a)(1)(D)(iv)(I) of the Act, respectively, permit the Commission to ''make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade * * * subject to the provisions of this Act'' and to make ''such reasonable periodic or special examinations * * * as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act. * * * ''[17] Under section 3 of the Act, the Commission also has general responsibilities, among others, to prevent manipulation and other disruptions to market integrity, to ensure the financial integrity of all transactions subject to the Act, and to protect all market participants from fraud.

Proposed regulation 41.32 is not meant to be an exhaustive list of SFPCM regulatory requirements. It would simply establish several additional reporting requirements which the Commission believes are necessary to carry out its statutory mandate relative to SFPCMs. Among others, the Commission emphasizes that SFPCMs must comply with the requirements of part 16 of the Commission's regulations,[18] and must provide the Commission access to any books and records relating to transactions conducted in reliance on its designation as a contract market in security futures products.[19] The Commission reiterates that SFPCMs would remain subject to all other applicable requirements of the Act and regulations thereunder.[20]

Additionally, the Commission has authority under Section 4i of the Act to collect information on the positions of large traders.[21] This information ordinarily is provided to the Commission by futures commission merchants (''FCMs''), clearing members, and foreign brokers, pursuant to part 17 of the Commission's regulations. Part 17 will apply to the trading of security

reference Commission regulation 40.1(e). Commission regulations referred to herein are found at 17 CFR Ch. I (2000).

[12] *See* proposed regulation 41.31(a)(5)(iv). Section 2(a)(1)(D)(vii) of the Act states: ''It shall be unlawful for a board of trade to trade or execute a security futures product unless the board of trade has provided the Commission with a certification that the specific security futures product and the board of trade, as applicable, meet the criteria specified in subclauses (I) through (XI) of [section 2(a)(1)(D)(i)], except as otherwise provided in [section 2(a)(1)(D)(vi)].''

[13] A change in regulatory status would include, among other things, suspension of registration pursuant to an order by the SEC, a switch in SEC registration from ''alternative trading system'' to ''national securities exchange,'' or suspension or revocation of membership by a registered futures association.

[14] *See* note 12.

[15] A change in the clearing facilities utilized by an SFPCM would be included in this category.

[16] Similar to proposed regulation 41.31, if a board of trade previously filed documents with the SEC containing information which would satisfy any of these proposed informational requirements, the Commission would accept copies of such documents in lieu of the required information.

[17] The Commission's authority under section 2(a)(1)(D)(iv)(I) of the Act is subject to certain limitations appearing later in that provision.

[18] The Commission will consider its need for data under part 16 once it becomes more apparent how security futures products will be listed by section 5 designated contract markets, 5a DTFs, and section 5f SFPCMs. The Commission will endeavor to limit its requests to information deemed necessary for routine market surveillance.

[19] The Commission's authority to require access to books and records by SFPCMs can be found in sections 4(a)(3), 4(b), 9g(b), and 4g(d) of the Act, in addition to Commission regulation 1.31, which would be reserved under the Commission's proposed regulatory reform rulemaking. *See* 66 FR 14262 (Mar. 9, 2001).

[20] *See* note 22.

[21] Section 4i of the Act prohibits any person to ''have or obtain a long or short position in any commodity or any future of such commodity equal to or in excess of such amount as shall be fixed from time to time by the Commission, unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any [such] transactions or positions * * * as the Commission may by rule or regulation require * * *.''

futures products. However, the Commission is concerned that, in certain instances, part 17 might fail to capture large trader information for security futures products. For example, if an ATS operates a non-intermediated marketplace and notice-designates as an SFPCM, it is not clear who would be responsible for providing to the Commission any large trader information arising out of security futures product transactions conducted on that marketplace. The Commission contemplates amending part 17 so that, in such circumstances, the ATS itself would be required to provide large trader position information that otherwise would be provided by an FCM. The Commission requests comment regarding this approach. More generally, the Commission invites comment on whether there are other potential circumstances under which large trader position information might not be captured by part 17, in its current form, particularly in light of this proposed rulemaking.

*D. Regulations 41.33(a)–(f), 41.34, and 140.99—Exemptions*

Section 5f(b)(4)(A) of the Act provides that the Commission ''by rule, regulation or order, may conditionally or unconditionally exempt'' any board of trade designated as an SFPCM from any provisions of the Act or regulations thereunder, to the extent that the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. Section 5f(b)(4)(B) directs the Commission to determine the procedures by which an exemptive order under section 5f(b)(4)(A) shall be granted, and vests the Commission with sole discretion to decline to entertain any application for such an order.

Accordingly, the Commission today proposes regulation 41.33. This provision would require an SFPCM seeking an exemption to file an application with the Commission containing various information, including: the name and address of the SFPCM requesting relief, and a contact person at the SFPCM; a certification that the SEC registration of the SFPCM is not suspended pursuant to an order of the SEC; an identification of the provision(s) from which the SFPCM is requesting relief and, if applicable, whether the SFPCM is subject to similar SEC provisions; the type of relief sought; and an explanation of the need for relief, including the extent to which such relief is necessary or appropriate in the public interest and consistent with the protection of investors.

The Commission would have 90 days to review the application, but could stay the review period at any time if it determines that the application is materially incomplete. Moreover, the Commission could, in its sole discretion, decline to entertain an application for any reason, without explanation, at any time during the review period. These exemptive order procedures would become an enumerated exception to the applicability of Commission Regulation 140.99, which governs generally the form and manner of requests for exemptive letters.

The Commission also proposes new regulation 41.34, which would list the provisions of the Act from which SFPCMs would be exempted. At this time, the Commission proposes that regulation 41.34(a) list each of the statutory provisions enumerated in section 5f(b)(1) of the Act.[22] In addition, regulation 41.34(b) would include section 6(a) of the Act, which addresses applications for designation as a contract market generally and also the Commission's review of such applications. The Commission believes that including section 6(a) in regulation 41.34 would eliminate any potential confusion about its applicability to SFPCMs and would make clear that the general contract market requirements of the Commission's proposed part 38 would not apply to SFPCMs.[23] Because SFPCMs are exempted from sections 5 and 5c of the Act,[24] and those provisions are the source for much of the authority for part 38, the Commission believes that SFPCMs would not have been subject to part 38. However, because proposed § 38.1, addressing the ''scope'' of part 38 generally, states that ''[t]he provisions of this part 38 shall apply to every board of trade or trading facility that has been designated as a contract market in a commodity under section 6 of the Act,'' [25] the Commission believes that specifically exempting SFPCMs from section 6(a) of the Act would further clarify that part 38 is inapplicable to SFPCMs.[26]

In addition to the proposals above, the Commission seeks comment from boards of trade and other interested persons regarding whether there are any other provisions of the Act or regulations thereunder from which SFPCMs should be exempt by regulation. The Commission is particularly interested in commenters' views regarding, among other things, the interplay between the enumerated exemptions in sections 5f(b)(1) and (2) of the Act and the Commission's regulations generally.[27]

*E. Regulation 41.33(g)—Delegation of Authority*

Finally, the Commission also proposes to delegate to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis, jointly, with the concurrence of the Commission's General Counsel, the authority to grant or deny applications for exemptive orders under proposed regulation 41.33. This proposed delegation of authority is intended to expedite the procedures described in proposed regulation 41.33 and place responsibility for them with those Commission staff members most directly involved in the relevant matters. The Commission believes that this delegation would maximize regulatory efficiency with respect to these applications.

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[22] Section 5f(b)(1) of the Act states—

A national securities exchange, national securities association, or alternative trading system that is designated as a contract market pursuant to section 5f shall be exempt from the following provisions of this Act and the rules thereunder:

(A) Subsections (c), (e), and (g) of section 4c.

(B) Section 4j.

(C) Section 5.

(D) Section 5c.

(E) Section 6a.

(F) Section 8(d).

(G) Section 9(f).

(H) Section 16.

[23] *See* note 11.

[24] *See* note 22.

[25] The Commission likely will change the phrase ''section 6 of the Act'' in proposed §§ 38.1 and 38.2 to ''section 6(a) of the Act'' when part 38 becomes final. The reason for this distinction is that other subsections in section 6 of the Act would continue to apply to SFPCMs. Likewise, although the inapplicability to SFPCMs of proposed part 40 is more certain, the Commission contemplates changing the definition of ''contract market'' in proposed § 40.1 so that it explicitly excludes SFPCMs.

[26] Notwithstanding the Commission's belief that its proposed part 38 rulemaking would not apply to SFPCMs, the Commission particularly seeks comment on whether any of the provisions of part 38 would facilitate the Commission's ability to carry out its statutory mandate with respect to SFPCMs and, thus, whether any such provisions should be incorporated into proposed regulation 41.32.

[27] Comments should indicate which provisions of the Act and regulations thereunder would be captured by the exemption in section 5f(b)(2) of the Act. That provision reads:

An alternative trading system that is a designated contract market under this section shall be required to be a member of a futures association registered under section 17 and shall be exempt from any provision of this Act that would require such alternative trading system to—

(A) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such alternative trading system; or

(B) Discipline subscribers other than by exclusion from trading.

## III. Related Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA''),[28] requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The regulations discussed herein would affect boards of trade seeking to be designated as a contract market in security futures products under notice procedures promulgated pursuant to section 5f(a) of the Act. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.[29] The Commission determined that contract markets are not small entities for the purpose of the RFA.[30]

The Commission further notes that section 252 of the CFMA requires the Commission to promulgate these regulations. Moreover, the regulations proposed herein would not impose any new burdens upon entities seeking to be designated as an SFPCM pursuant section 5f(a) of the Act. Rather, these regulations would facilitate exemptive relief from the more burdensome requirements in sections 5 and 5a of the Act, and regulations thereunder, that otherwise would be applicable to entities seeking to list security futures products for trading. Therefore, the Commission believes that the adoption of these regulations would reduce the burden of compliance by such entities.

Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the regulations proposed herein would not have a significant economic impact on a substantial number of small entities. The Commission nonetheless requests comment on the impact these proposed regulations may have on small entities.

### *B. Paperwork Reduction Act*

The regulations proposed herein would contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (''PRA''), the Commission has submitted a copy of this part to the Office of Management and Budget (''OMB'') for its review.[31]

Collection of Information

Part 41, relating to security futures products, OMB Control Number 3038–AB82.

The burden associated with proposed regulation 41.31 is estimated to be 100 hours, which will result from designation as SFPCMs of various boards of trade that are otherwise subject to SEC jurisdiction. The estimated burden of the proposed new regulation was calculated as follows:

*Estimated number of respondents:* 20.

*Reports annually by each respondent:* 1.

*Total annual responses:* 20.

*Estimated average number of hours per response:* 5.

*Estimated total number of hours of annual burden in fiscal year:* 100.

The burden associated with proposed regulation 41.32 is estimated to be 600 hours, which will result from continuing obligations of SFPCMs to file information with the Commission. The estimated burden of the proposed new regulation was calculated as follows:

*Estimated number of respondents:* 20.

*Reports annually by each respondent:* 10.

*Total annual responses:* 200.

*Estimated average number of hours per response:* 3.

*Estimated total number of hours of annual burden in fiscal year:* 600.

The burden associated with proposed regulation 41.33 is estimated to be 500 hours, which will result from applications for exemptions by SFPCMs. The estimated burden of the proposed new regulation was calculated as follows:

*Estimated number of respondents:* 20.

*Reports annually by each respondent:* 1.

*Total annual responses:* 20.

*Estimated average number of hours per response:* 25.

*Estimated total number of hours of annual burden in fiscal year:* 500.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are required to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. A comment to OMB is most assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

### *C. Cost-Benefit Analysis*

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission, before promulgating a new regulation under the Act, to consider the costs and benefits of the Commission's action. The Commission recently applied the cost-benefit provisions of section 15 for the first time with respect to a final rulemaking,[32] and understands that section 15, as amended, does not require the Commission to quantify the costs and benefits of a new regulation or determine whether the benefits of the regulation outweigh its costs.

The amended section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery;[33] (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its

[28] 5 U.S.C. 601 *et seq.* (1994 and Supp. II 1996).

[29] 47 CFR 18618 (April 30, 1982).

[30] 47 FR at 18619–20.

[31] 44 U.S.C. 3501 *et seq.* An agency may not sponsor, and a person is not required to respond to, any information collection unless it displays a currently valid OMB control number.

[32] 66 FR 20740 (Apr. 25, 2001).

[33] Price discovery is not a concern relevant to this rulemaking.

costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The main areas of concern relevant to this proposal are the first two set forth in the Act, ''protection of market participants and the public'' and ''efficiency, competitiveness and financial integrity of the futures markets.'' The Commission notes that the CFMA specifically mandates that certain boards of trade be notice-designated by the Commission as a contract market if they seek to list or trade security futures products only, and that procedures be established by the Commission for such entities to apply for exemptions from the Act or regulations thereunder. Further, the Commission believes that these additional registrants may promote the efficiency and competitiveness of those futures markets on which security future products may be traded and, in turn, may serve to promote the financial integrity of those markets. The Commission has endeavored to impose minimal costs—i.e., only necessary disclosure and recordkeeping—on any of the entities involved, so that the benefits of the notice-designation and exemptive processes intended by Congress can be fully realized. The Commission further notes that submitting an application for exemptive relief is not required of SFPCMs, but rather elected on a voluntary basis.

**List of Subjects**

*17 CFR Part 41*

Contract markets, reporting and recordkeeping requirements, security futures products.

*17 CFR Part 140*

Authority delegations.

For the reasons discussed in the preamble, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 41—SECURITY FUTURES PRODUCTS

1. The authority citation for Part 41 would be revised to read as follows:

**Authority:** Pub. L. 106–554, 114 Stat. 2763, Sections 251 and 252.

2. Section 41.1 would be added as follows:

### § 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) *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.

(d) *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.

(e) *Rule* shall have the meaning set forth in Commission regulation 1.41(a)(1).

(f) *Security futures product* shall have the meaning set forth in section 1a(32) of the Act.

3. Section 41.31 would be added as follows:

### § 41.31 Designated contract markets in security futures products—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, DC, 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;

(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.

4. Section 41.32 would be added as follows:

### § 41.32 Designated contract markets in security futures products—continuing obligations.

(a) A board of trade designated as a contract market in security futures products pursuant to Commission regulation 41.31 shall:

(1) 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;

(2) 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;

(3) Consistent with any requirements established by the Commission, 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

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

(i) such information related to its business as a designated contract market

in security futures products as the Commission may request; and

(ii) 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.

(b) Except as exempted under section 5f(b) of the Act or under Commission regulations 41.33 and 41.34, any board of trade designated as a contract market in security futures products pursuant to Commission regulation 41.31 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.

5. Section 41.33 would be added as follows:

**§ 41.33 Designated contract markets in security futures products—applications for exemptive orders.**

(a) Any board of trade designated as a contract market in security futures products pursuant to Commission regulation 41.31 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 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, DC, 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 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 Trading and Markets and the Director of the Division of Economic Analysis, jointly, 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 Trading and Markets or the Director of the Division of Economic Analysis 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 Trading and Markets and the Director of the Division of Economic Analysis under paragraph (g) of this section.

6. Section 41.34 would be added as follows:

**§ 41.34 Designated contract markets in security futures products—exempt provisions.**

Any board of trade notice-designated as a contract market in security futures products pursuant to Commission regulation 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 4c(c);
(2) section 4c(e);
(3) section 4c(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) section 6(a) of the Act, pursuant to section 5f(b)(4) of the Act.

## PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

7. The authority citation for Part 140 would continue to read as follows:

**Authority:** 7 U.S.C. 4a and 12a.

8. Section 140.99 is amended by adding new paragraph (i)(3) as follows:

**§ 140.99 Requests for exemptive, no-action and interpretive letters.**

* * * * *

(i) * * *

(3) Requests for exemption pursuant to Commission regulation 41.33.

Issued in Washington, DC on May 22, 2001 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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