

(4) Reenter the cab of the truck and remove boots before placing feet onto floorboards. Remove hairnet and leave with disposable boots on farm.

(5) Sanitize hands using appropriate hand sanitizer.

(6) Return to the hatchery or go to the next farm and repeat the process.

#### § 147.25 [Amended]

24. Section 147.25 would be amended by removing the words “as an essential” and adding the words “or rooms as a” in their place.

25. Section 147.26 would be amended as follows:

a. By revising paragraph (a).

b. In paragraph (b)(5), by removing the word “Keep” and adding the words “Establish a rodent control program to keep” in its place.

c. By removing paragraph (b)(10) and redesignating paragraphs (b)(11) through (b)(15) as paragraphs (b)(10) through (b)(14), respectively.

#### § 147.26 Procedures for establishing isolation and maintaining sanitation and good management practices for the control of Salmonella and Mycoplasma infections.

(a) The following procedures are required for participation under the U.S. Sanitation Monitored, U.S. M. Gallisepticum Clean, U.S. M. Synoviae Clean, U.S. S. Enteritidis Monitored, and U.S. S. Enteritidis Clean classifications:

(1) Allow no visitors except under controlled conditions to minimize the introduction of *Salmonella* and *Mycoplasma*. Such conditions must be approved by the Official State Agency and the Service;

(2) Maintain breeder flocks on farms free from market birds and other domesticated fowl. Follow proper isolation procedures as approved by the Official State Agency;

(3) Dispose of all dead birds by locally approved methods.

\* \* \* \* \*

26. In § 147.43, paragraph (b) would be revised to read as follows:

#### § 147.43 General Conference Committee.

\* \* \* \* \*

(b) The regional committee members and their alternates will be elected by the official delegates of their respective regions, and the member-at-large will be elected by all official delegates. There must be at least two nominees for each position, the voting will be by secret ballot, and the results will be recorded. At least one nominee from each region must be from an underrepresented group (minorities, women, or persons with disabilities). The process for soliciting nominations for regional

committee members will include, but not be limited to: Advertisements in at least two industry journals, such as the newsletters of the American Association of Avian Pathologists, the National Chicken Council, the United Egg Producers, and the National Turkey Federation; a **Federal Register** announcement; and special inquiries for nominations from universities or colleges with minority/disability enrollments and faculty members in poultry science or veterinary science.

\* \* \* \* \*

Done in Washington, DC, this 11th day of July 2001.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 01-17805 Filed 7-19-01; 8:45 am]

**BILLING CODE 3410-34-U**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 41

RIN 3038-AB73

#### Listing Standards and Conditions for Trading Security Futures Products

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) proposes Rules 41.21 through 41.25 under the Commodity Exchange Act (“CEA”).<sup>1</sup> These proposed rules relate to new statutory provisions enacted by the Commodity Futures Modernization Act of 2000 (“CFMA”)<sup>2</sup> that specify listing standards and conditions for trading of security futures products. These proposed rules also establish requirements related to the reporting of data, trading halts, position limits, and special provisions relating to contract design of cash-settled security futures products and the physical delivery of security futures products.

**DATES:** Comments must be received on or before August 20, 2001.

**ADDRESSES:** Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to 202-418-5521, or by e-mail to [secretary@cftc.gov](mailto:secretary@cftc.gov).

<sup>1</sup> 7 U.S.C. 1 *et seq.*

<sup>2</sup> Pub. L. 106-554, 114 Stat. 2763. The text of the CFMA may be accessed on the Internet at <http://agriculture.house.gov/txt5660.pdf>.

Reference should be made to “Listing Standards and Conditions for Security Futures.”

**FOR FURTHER INFORMATION CONTACT:** Richard A. Shilts, Acting Director, Division of Economic Analysis; Thomas M. Leahy, Jr., Financial Instruments Unit Chief, Division of Economic Analysis; or Gabrielle A. Sudik, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, D.C. 20581. Telephone: 202-418-5000. E-mail: ([RShilts@cftc.gov](mailto:RShilts@cftc.gov)), ([TLeahy@cftc.gov](mailto:TLeahy@cftc.gov)), or ([GSudik@cftc.gov](mailto:GSudik@cftc.gov)).

**SUPPLEMENTARY INFORMATION:** The Commodity Futures Trading Commission today proposes for public comment new rules 41.21 through 41.25 under part 41, 17 CFR part 41, under the Commodity Exchange Act as amended by the Commodity Futures Modernization Act of 2000 (7 U.S.C. 1 *et seq.*, as amended by Appendix E of Pub. L. 106-554, 114 Stat. 2763).

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#### I. Background

On December 21, 2000, the CFMA was signed into law. Among other things, the CFMA lifted the ban on single stock and narrow-based stock index futures (“security futures”).<sup>3</sup> In addition, the CFMA established a framework for the joint regulation of security futures products<sup>4</sup> by the CFTC and the Securities and Exchange Commission (“SEC”).<sup>5</sup>

<sup>3</sup> See section 251(a) of the CFMA. This trading previously had been prohibited by section 2(a)(1)(B)(v) of the CEA.

<sup>4</sup> The term “security futures product” is defined in section 1a(32) of the CEA and section 3(a)(56) of the Exchange 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 CEA and section 3(a)(55)(A) of the Exchange Act to include futures contracts on individual securities and on narrow-based security indexes: The term “narrow-based security index” is defined in section 1a(25) of the CEA and section 3(a)(55)(B) of the Exchange 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 product that may be available for trading until that date.

<sup>5</sup> The CFMA also prescribes the dates on which security futures trading can commence.

Prior to enactment of the CFMA, the Shad-Johnson Accord ("Accord")<sup>6</sup> governed trading in contracts of sale for future delivery ("futures contracts" or "futures") on securities and security indexes. Negotiated by the Chairmen of the SEC and the CFTC in 1982 and signed into law in 1983, the Accord permitted futures exchanges to offer futures contracts on security indexes if the contracts satisfied certain statutory criteria: (1) The contract had to be cash-settled; (2) the contract could not be readily susceptible to manipulation; and (3) the underlying securities had to measure and reflect the entire market or a substantial segment of the market, *i.e.*, it was a "broad-based" security index. The Accord prohibited any futures on security indexes that did not meet these criteria.<sup>7</sup>

In addition to repealing the prohibition on certain types of security futures, the CFMA amended the CEA and the Securities Exchange Act of 1934 ("Exchange Act") by adding a definition of "narrow-based security index." Futures contracts on security indexes that are narrow-based security indexes will be jointly regulated by the CFTC and the SEC under the framework established by the CFMA. Section 2(a)(1)(D) of the CEA and section 6(h) of the Exchange Act establish listing standards and conditions for entities wishing to list and trade security futures products.

It is important that the listing standards and conditions in the CEA and the Exchange Act be easily understood and applied by boards of trade. The rules proposed today address issues related to these standards and establish uniform requirements related to position limits, as well as provisions to minimize the potential for manipulation and disruption to the futures markets and underlying securities markets. Additional conditions related to trading halts and acceptable procedures for cash settlement will be addressed in a future joint rulemaking by the Commission and the SEC.

Specifically, principal-to-principal transactions between institutions cannot commence until August 21, 2001 and retail transactions cannot commence until December 21, 2001. Both starting dates are conditioned upon the registration of a futures association as a national securities association under the Exchange Act. Section 202(a) of the CFMA; Section 6(g)(5) of the Exchange Act.

<sup>6</sup> The Accord was codified in the Securities Act Amendments of 1982, which amended section 2 of the Securities Act of 1933, section 3 of the Securities Exchange Act of 1934, and section 2(a)(1)(B) of the Commodity Exchange Act.

<sup>7</sup> See *id.*

## II. Section-by-Section Analysis

### *Purpose and Scope*

Section 251 of the CFMA amends section 2 of the CEA by providing that in order for a board of trade to list security futures products, the security futures products and the securities underlying the security futures products must meet a number of standards and conditions termed "listing standards." Boards of trade may list for trading only security futures products that conform to the conditions and criteria specified in section 2(a)(1)(D)(i) of the CEA, which, among other criteria, requires that security futures products not be readily susceptible to manipulation. Except as otherwise provided in a rule, regulation or order, the underlying security or securities must be registered pursuant to section 12 of the Exchange Act and must be based upon common stock or such other equity securities as the Commission and the SEC jointly determine appropriate. These listing standards also relate to rules regarding settlement; who may deal in security futures products; prohibitions on dual trading; the prevention of price manipulation; and rules governing surveillance, audit trails, trading halts, and margin requirements. These proposed rules would implement these provisions of the CFMA and enumerate certain requirements and conditions for listing and trading security futures products.

Furthermore, section 6(h)(2) of the Exchange Act, as amended by section 206 of the CFMA, provides that security futures products must conform to listing standards that the national securities exchange or national securities association registered under section 15A of the Exchange Act ("exchange or association") files with the SEC under section 19(b) of the Exchange Act. Section 6(h)(2) of the Exchange Act also requires that a national securities exchange or national securities association meet the requirements of section 2(a)(1)(D)(i) of the CEA. In addition, section 6(h)(3)(C) of the Exchange Act imposes the additional requirement that the exchange or association's listing standards for security futures products must be no less restrictive than comparable listing standards for security options. The SEC may issue guidance for boards of trade as to the listing standards that would satisfy this requirement.

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 CEA or that is registered with the Commission as a derivatives transaction

execution facility ("DTF") pursuant to section 5a of the CEA. In addition, section 5f(a) of the CEA permits certain entities that are otherwise regulated by the SEC to be designated contract markets for the limited purpose of trading security futures products. Specifically, any board of trade that is registered with the SEC as a national securities exchange pursuant to section 6(a) of the Exchange Act, is registered with the SEC as a national securities association pursuant to section 15A(a) of the Exchange Act, or is an alternative trading system ("ATS") as defined by section 1a(1) of the CEA shall be a designated contract market in security futures products if certain conditions are met.<sup>8</sup>

### *Section 41.21 Requirements for Underlying Securities*

Paragraph (a) of proposed section 41.21 addresses security futures products based on a single security. Paragraph (a) implements the requirements of sections 2(a)(1)(D)(i)(I) and (III) of the CEA<sup>9</sup> by providing that a security futures product based on a single security may be traded if, except as otherwise provided by a rule, regulation or order, the security is registered pursuant to section 12 of the Exchange Act and the security is common stock or other equity security as the Commission and the SEC determine appropriate. Furthermore, security futures products must conform to other regulations issued by the SEC, in accordance with section 6(h) of the Exchange Act, as amended by section 206 of the CFMA.

Paragraph (b) of proposed section 41.21 addresses security futures products based on two or more securities. Subsection (b) implements a substantive provision of section 1a of the CEA, as amended by section 101 of the CFMA, by providing that a futures contract based on an index comprised of two or more securities may be traded as a security futures product if: (1) The index meets the narrow-based security index definition found in section 1a(25)

<sup>8</sup> See 66 FR 29517-23 (May 31, 2001). In that notice, the Commission proposed new regulations that 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. By registering with the Commission, a national securities exchange, a national securities association, or an alternative trading system is, by definition, a designated contract market for purposes of trading security futures products. Hence, references in the proposed rules to designated contract markets include notice-registered contract markets, except where otherwise noted.

<sup>9</sup> Section 251 of the CFMA added subparagraph (D) to section 2(a)(1) of the CEA.

of the CEA; <sup>10</sup> (2) the securities are registered pursuant to section 12 of the Exchange Act; (3) the securities are common stock or other equity securities as the Commission and the SEC determine appropriate; and (4) the securities meet the listing standards required by the SEC pursuant to section 6(h) of the Exchange Act.

Paragraph (c) of proposed section 41.21 is reserved for rulemaking pursuant to section 2(a)(1)(D)(v) of the CEA, which allows the Commission and the SEC to jointly modify the criteria of sections 2(a)(1)(D)(i)(I) and 2(a)(1)(D)(i)(III) of the CEA.

#### *Section 41.22 Required Certifications*

Section 2(a)(1)(D)(vii) of the CEA makes it unlawful for a designated contract market or registered derivatives transaction execution facility to list for trading or execution a security futures product unless it has provided the Commission with a certification that the security futures product and the board of trade meet specified requirements. Accordingly, as discussed below, paragraphs (b) through (j) of proposed section 41.22 require designated contract markets and registered derivatives transaction execution facilities to certify that they meet the specified requirements of section 2(a)(1)(D)(vii) of the CEA. In addition, paragraph (a) of proposed § 41.22 requires a designated contract market or registered derivatives transaction execution facility to certify that the security or securities underlying a security futures product meet the requirements of proposed rule 41.21, including the requirement that the securities underlying a security futures product conform to the listings standards filed with the SEC under section 19(b) of the Exchange Act, as discussed above.

Section 2(a)(1)(D)(i)(II) of the CEA provides that, if a security futures product is not cash-settled, the designated contract market or registered derivatives transaction execution facility must have arrangements with a clearing agency registered with the SEC for the payment and delivery of the

securities underlying the security futures product. Paragraph (b) of proposed § 41.22 implements this provision by requiring a certification that the designated contract market or registered derivatives transaction execution facility will comply with this requirement.

Section 2(a)(1)(D)(i)(V) of the CEA provides that 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 Exchange Act (including notice-registered brokers or dealers)<sup>11</sup> may solicit, accept orders for, or otherwise deal in any transaction in or in connection with security futures products. Paragraph (d) of proposed § 41.22 implements this provision by requiring a certification that only these entities and persons, except to the extent otherwise permitted under the Exchange Act and the rules and regulations thereunder, may accept orders for or otherwise deal in security futures products.

Section 2(a)(1)(D)(i)(VI) of the CEA provides that security futures products must be subject to the prohibition against dual trading in section 4j of the CEA or section 11(a) of the Exchange Act. Paragraph (e) of proposed § 41.22 implements this requirement by requiring a designated contract market or registered derivatives transaction execution facility to prohibit dual trading in accordance with proposed section 41.27.

Notice designated contract markets are exempt from the provisions of section 4j of the CEA by virtue of section 5f(b)(1)(B). A notice designated contract market therefore does not need to certify that it is acting in accordance with proposed rule 41.27. However, it should be noted that notice designated contract markets are still bound by the prohibition against dual trading under section 11(a) of the Exchange Act and any accompanying rules and regulations.

Section 2(a)(1)(D)(i)(VII) of the CEA requires that designated contract markets and registered derivatives transaction execution facilities maintain procedures to prevent manipulation of the price of security futures products, any underlying security, an option on

such security, or an option on a group or index including such security. Paragraph (f) of proposed § 41.22 requires a certification that trading in the security futures product will not be readily susceptible to manipulation of the price of such security futures product or of the price of any underlying security or securities or any option thereon.

Section 2(a)(1)(D)(i)(VIII) of the CEA requires designated contract markets and registered derivatives transaction execution facilities on which security futures products are traded to coordinate surveillance with markets that trade the underlying security or any related security, in order to detect manipulation and insider trading. This requirement is proposed to be implemented by paragraph (g) of proposed § 41.22, which requires that a board of trade certify that it is a member of the Intermarket Surveillance Group (the "ISG").

The Intermarket Surveillance Group was created under the auspices of the SEC in 1983 as a forum to ensure that national securities exchanges and national securities associations adequately share surveillance information and coordinate inquiries and investigations designed to address potential intermarket manipulations and trading abuses. All national securities exchanges and national securities associations are full members of the ISG. Full members routinely share a great deal of surveillance and investigatory information, and this framework has proven to be an essential mechanism to ensure that there is adequate information sharing and investigatory coordination for potential intermarket manipulations and trading abuses.

In view of the growth of stock index futures contracts, since 1987, several futures exchanges and non-U.S. exchanges and associations have been affiliate members of the ISG. Affiliate members are required to share information on a more limited basis with the ISG.

To ensure that boards of trade have procedures in place for the coordinated surveillance required by section 2(a)(1)(D)(i)(VIII) of the CEA, the Commission believes that it is essential that all boards of trade that trade security futures products be full members of the ISG. In view of this proposed requirement and recognizing the essential role played by the ISG, as noted above, the Commission also believes that the ISG should grant full memberships to all boards of trade that trade security futures products upon a

<sup>10</sup> Section 1a(25) of the CEA defines a narrow-based security index as an index: (i) that is comprised of nine or fewer component securities; (ii) in which a component security comprises more than 30 percent of the index's weighting; (iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or (iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than \$50 million or, in the case of an index with 15 or more component securities, \$30 million.

<sup>11</sup> Section 4f of the CEA, as amended by section 252(b) of the CFMA, allows brokers and dealers registered with the SEC to register with the Commission as futures commission merchants or introducing brokers so long as they adhere to certain requirements regarding transactions in connection with security futures products.

good-faith showing that such entities meet the criteria for full membership.<sup>12</sup>

Section 2(a)(1)(D)(i)(IX) of the CEA requires that designated contract markets and registered derivatives transaction execution facilities on which security futures products are traded have audit trails in place to facilitate the coordinated surveillance required by subclause (VIII). Paragraph (h) of proposed § 41.22 implements this requirement. The Commission believes that the audit trails already in place on designated contract markets can serve this purpose. Based on future developments of markets for security futures products, modifications may be appropriate.

Section 2(a)(1)(D)(i)(X) of the CEA requires that designated contract markets and registered derivatives transaction execution facilities have in place procedures to coordinate trading halts between boards of trade. Paragraph (i) of proposed § 41.22 requires a board of trade to certify that it has such procedures in place.

Alternative trading systems, national securities associations registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which an alternative trading system is a member do not need to make certifications under paragraphs (g), (h), and (i) of this section, as provided by sections 2(a)(1)(D)(i)(VIII)–(X).

Section 2(a)(1)(D)(i)(XI) of the CEA requires that the margin requirements for security futures products comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Exchange Act. Paragraph (j) of proposed § 41.22 implements this section by requiring a certification of compliance with the margin requirements currently being drafted in a separate rulemaking.<sup>13</sup>

#### *Section 41.23 Listing of Security Futures Products for Trading*

Section 2(a)(1)(D)(vii) of the CEA prescribes that a designated contract market or registered derivatives transaction execution facility must provide the Commission with a certification of compliance with section

2(a)(1)(D)(i) of the CEA before trading or executing a security futures product. Paragraph (a) of proposed § 41.23 implements this requirement by describing the documents that must be filed with the Commission, including documents and certifications required by proposed §§ 41.22 and 41.25.

Paragraph (b) of proposed § 41.23 prescribes the procedures for voluntary submission by designated contract markets or registered derivatives transaction execution facilities of security futures products for Commission approval, as permitted by section 5c(c)(2) of the CEA. Notice designated contract markets would not be permitted to request Commission approval of security futures products, since they are exempt from the provisions of 5c of the CEA by virtue of section 5f(b)(1)(D) of the CEA.

#### *Section 41.24 Rule Amendments Relating to Security Futures Products*

Section 5c(c)(1) of the CEA, as enacted by section 113 of the CFMA, provides that a registered entity may implement a rule or rule amendment by certifying that the new rule or rule amendment complies with the CEA.<sup>14</sup> Paragraph (a) of proposed § 41.24 requires designated contract markets (including notice designated contract markets) and registered derivatives clearing organizations to file with the Commission any rule or rule amendment. Designated contract markets pursuant to section 5 of the CEA and registered derivatives clearing organizations pursuant to section 5b of the CEA (but not notice designated clearing organizations), must follow the procedures for self-certification of rules and rule amendments relating to security futures contained in proposed § 41.24(a)(4).

Paragraph (b) of proposed § 41.24 would mandate that the procedures of paragraph (a) also apply to the self-certification of rules relating to security futures products by registered derivatives transaction execution facilities, notwithstanding proposed § 37.7.

Paragraph (c) of proposed § 41.24 would allow a designated contract market, registered derivatives transaction execution facility, or registered derivatives clearing organization to submit rules for Commission approval, as permitted by section 5c(c)(2) of the CEA. However, notice designated contract markets

would not be permitted to request Commission approval of rules, since section 5f of the CEA exempts these entities from section 5c(c)(2) of the CEA.

#### *Section 41.25 Additional Conditions for Trading Security Futures Products*

Section 2(a)(1)(D)(i)(VII) of the CEA requires that trading in a security futures product not be readily susceptible to manipulation of the price of the security futures product, the price of any underlying security, option on such security, or option on a group or index of including such securities. Proposed § 41.25 establishes requirements in this regard related to data reporting, trading halts, position limits, and certain contract design features. Paragraph (a) of proposed § 41.25 establishes requirements that are common to all security futures products, while paragraphs (b) and (c) establish requirements for cash-settled and physical delivery contracts, respectively.

Paragraph (a)(1) of proposed § 41.25 requires designated contract markets and registered derivatives transaction execution facilities to comply with part 16 of the Commission's regulations regarding the daily reporting of market data. Paragraph (a)(2) is reserved for the establishment of rules providing for regulatory halts for trading in security futures products, which will be addressed in a separate rulemaking. Paragraph (a)(3) requires designated contract markets and registered derivatives transaction execution facilities to establish speculative position limits or position accountability rules for security futures products, generally based on the average daily trading volume of the underlying security during the most recent six-month period.

Specifically, the Commission is proposing to require boards of trade to adopt speculative position limit or position accountability rules for listed security futures. The level of the position limit and whether a position limit is required depends upon the trading activity and capitalization of the security or securities underlying the security future. The speculative position limit level adopted by a board of trade should be consistent with the obligation in section 2(a)(1)(D)(i)(VII) of the CEA that the designated contract market or registered derivatives transaction execution facility maintain procedures to prevent manipulation of the price of the security futures product and the underlying security or securities.

The position limit levels proposed in this rule are set at levels comparable to the limits that currently apply to

<sup>12</sup> The Commission understands that the SEC concurs with the Commission's belief regarding the requirement that boards of trade trading security futures become full ISG members and that such boards of trade be granted full ISG membership.

<sup>13</sup> The proposed rules regarding margin requirements will be published in the near future. Once the margin requirement rules are published, the final version of these rules will note the part and section wherein margin requirements can be found.

<sup>14</sup> Section 1a(29) of the CEA defines registered entities as designated contract markets, registered derivatives transaction execution facilities, registered derivatives clearing organizations, and notice-designated contract markets.

options on individual securities. However, the proposed position limit requirements for security futures differ from individual security option position limit rules in several ways. In this regard, the proposed limits would only apply to an expiring security futures contract during its five last trading days. The Commission believes that it is during that time period that the potential for manipulation based on an extraordinarily large futures position would most likely occur. Further, for security futures contracts based on a security that has an average daily trading volume greater than 20 million shares, the Commission believes that the threat of manipulation is sufficiently reduced such that an exchange could substitute a position accountability rule for a fixed position limit. Under such a rule, a trader holding a position in a security future that exceeded a threshold level determined by the exchange (e.g., no more than 22,500 contracts of 100 shares) would agree to provide information to the exchange regarding that position and consent to halt increasing the position if requested by the exchange.

Paragraph (b) of proposed § 41.25 relates to security futures products that are cash settled. This paragraph provides that the cash-settlement provisions of security futures products must be reliable and acceptable, reflect the price of the underlying security or securities, and not be readily susceptible to manipulation. Paragraph (b) is in part reserved for specific rules relating to special requirements regarding the cash-settlement price, which will be addressed in a separate rulemaking.

Paragraph (c) of proposed § 41.25 relates to security futures products that are settled by actual delivery of the underlying security or securities. This paragraph provides that a board of trade must effect physical delivery through a clearing agency registered pursuant to section 17A of the Exchange Act. This provision implements section 2(a)(1)(D)(i)(II) of the CEA, which requires that, if a security futures product is not cash settled, the board of trade on which the product is traded must have arrangements in place with such a clearing agency for payment and delivery of the underlying securities.

### III. Request for Comments

The Commission solicits comments on all aspects of Proposed Rules 41.21 through 41.25 under the CEA. In particular, do the proposed filing and certification procedures represent effective and reasonable ways to ensure that the requirements of the CEA and

the Exchange Act are satisfied? In addition, the Commission seeks comments on whether the proposed position limit provisions are appropriate to deter manipulation in security futures products, and whether it is desirable to establish the applicable position limit levels based on average daily trading volume and capitalization of the underlying securities. The Commission also seeks comment on whether any potential manipulation of security futures products is more likely to occur at contract expiration than at other times. Commenters are welcome to offer their views on any other matter raised by the proposed rules.

### IV. Costs and Benefits of the Proposed Rules

Section 15 of the CEA requires the Commission to consider the costs and benefits of its action before issuing a new regulation.<sup>15</sup> The Commission understands that, by its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15 simply requires the Commission to “consider the costs and benefits” of its action.

Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule 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 CEA.

The proposed rules constitute one part of a package of related rule provisions. The rules provide guidance and establish procedures for trading facilities in order to facilitate compliance with governing laws related to security futures products.

The Commission has considered the costs and benefits of the proposed rules as a totality, in light of the specific areas of concern identified in section 15. The proposed rules should have no effect,

from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets or on the risk management practices of trading facilities or others. The proposed rules also should have no material effect on the protection of market participants and the public and should not impact the efficiency and competition of the markets.

Accordingly, the Commission has determined to propose the rules discussed above. The Commission invites public comment on the application of the cost-benefit provision of section 15 of the CEA in regard to the proposed rules. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposed rules.

### V. Related Matters

#### A. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”) of 1995 (44 U.S.C. 3501 *et seq.*) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking contains information collection requirements within the meaning of the PRA. The Commission has submitted a copy of this part to the Office of Management and Budget (OMB) for its review in accordance with 44 U.S.C. 3507(d).

*Collection of Information:* Part 41, Relating to Security Futures Products, OMB Control Number 3038-XXXX.

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number. The Commission is currently requesting a control number for this information collection from OMB.

As noted above, the CFMA lifted the ban on trading single stock and narrow-based stock index futures and established a framework for the joint regulation of these products by the Commission and the SEC. In addition, the CFMA amended the CEA and the Exchange Act by adding a definition of “narrow-based security index,” which establishes an objective test of whether a security index is narrow-based.<sup>16</sup> Futures contracts on security indexes that meet the statutory definition are jointly regulated by the Commission and the SEC. Futures contracts on indexes that do not meet the statutory definition

<sup>15</sup> 7 U.S.C. 19.

<sup>16</sup> See section 1a(25)(A) of the CEA and section 3(a)(55)(B) of the Exchange Act.

remain under the sole jurisdiction of the Commission.

The effect of proposed rules 41.22, 41.23, 41.24, and 41.25 will be to increase the burden previously submitted to OMB by 750 hours resulting from the preparation of materials to be filed with the Commission in connection with the listing of security futures products by designated contract markets and registered derivatives transaction execution facilities.

The estimated burden of proposed rules 41.22, 41.23, 41.24, and 41.25 was calculated as follows:

*Estimated number of respondents:* 15.

*Total annual responses:* 50.

*Estimated average number of hours per response:* 1.

*Estimated total number of hours of annual burden:* 750.

This annual reporting burden represents an increase of 750 hours as a result of the proposed new rules.

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 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 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 best 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 Commission from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418-5160.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA") requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.<sup>17</sup> The rules adopted herein would affect contract markets and other trading facilities. The Commission has previously established certain definitions of "small entities" to be used in evaluating the impact of its rules on small entities in accordance with the RFA.<sup>18</sup> In its previous determinations, the Commission has concluded that contract markets are not small entities for the purpose of the RFA.<sup>19</sup> The Commission has also recently proposed determining that the other trading facilities subject to its jurisdiction, for reasons similar to those applicable to contract markets, would not be small entities for purposes of the RFA.<sup>20</sup>

Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant economic impact on a substantial number of small entities. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on this finding and on its proposed determination that trading facilities such as registered derivatives transaction execution facilities are not small entities for purposes of the RFA.

#### **VI. Statutory Authority**

The Commission has the authority to propose these rules pursuant to sections 1a, 2(a)(1)(D), and 5c(c) of the CEA, [7 U.S.C. 1a, 2(a)(1)(D), and 7a-2(c)].

#### **List of Subjects in 17 CFR Part 41**

Security futures products.

#### **Text of Proposed Rules**

In accordance with the foregoing, Title 17, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

<sup>17</sup> 5 U.S.C. 601 *et seq.*

<sup>18</sup> See 47 FR 18618-21 (April 30, 1982).

<sup>19</sup> See *id.* at 18619 (discussing contract markets).

<sup>20</sup> See 66 FR 14262, 14268 (March 9, 2001).

#### **PART 41—SECURITY FUTURES PRODUCTS**

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

**Authority:** 7 U.S.C. 1a(25), 2(a), 6j, 7a-2(c) and 12a(5).

2. Subpart C is proposed to be added to read as follows:

#### **Subpart C—Requirements and Standards for Security Futures Products**

Sec.

41.21 Requirements for underlying securities.

41.22 Required certifications.

41.23 Listing of security futures products for trading.

41.24 Rule amendments to security futures products.

41.25 Additional conditions for trading security futures products.

#### **Subpart C—Requirements and Standards for Listing Security Futures Products**

##### **§ 41.21 Requirements for underlying securities.**

(a) *Security futures products based on a single security.* A security future is eligible to be traded only if the security underlying the security future is:

(1) A security registered pursuant to section 12 of the Securities Exchange Act of 1934;

(2) The security is:

- Common stock, or
- Such other equity security as the Commission and the SEC jointly deem appropriate; and,

(3) The security conforms with the listing standards 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.* An index of two or more securities is eligible to be traded as a security future 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:

- Common stock, or
- Such other equity securities as the Commission and the SEC jointly deem appropriate; and,

(4) The index conforms with the listing standards 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.

(c) [Reserved for future rulemaking regarding exemptions to the listing

standards set forth in paragraphs (a) and (b) of this section.]

#### § 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 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) [Reserved for common clearing following compliance date];

(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, will 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) The board of trade is a member of the Intermarket Surveillance Group. A board of trade that is an alternative trading system, 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 of which such alternative trading system is a member, does not need to make this certification;

(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, 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 of which such alternative trading system is a member, does not need to make this certification;

(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, 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 of which such alternative trading system is a member, does not need to make this certification; and

(j) The margin requirements for the security futures product will comply with the provisions specified in rule [XX].<sup>1</sup>

#### § 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, D.C. 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;

<sup>1</sup> As noted in the preamble, the cross-reference to the margin requirement rule will be inserted in the final rules when those proposed rules are published.

(4) Includes a certification that the terms and conditions of the contract comply with the additional conditions for trading of § 41.25; and

(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.

(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 markets may not request Commission approval of security futures products.

#### § 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; and

(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.

(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 or rule amendment pursuant to the procedures of paragraph (a) of this section.

(c) *Voluntary submission of rules for Commission review and approval.* A designated contract market, registered derivatives transaction execution facility, or a registered derivatives clearing organization clearing security futures products may request that the Commission approve any rule or proposed rule or rule amendment relating to a security futures product under the procedures of § 40.5 of this chapter, provided however that the registered entity shall include the certifications required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of rules.

**§ 41.25 Additional conditions for trading for security futures products.**

(a) *Common provisions.—(1) Reporting of data.* The designated contract market or registered derivatives transaction execution facility shall comply with chapter 16 of this title requiring the daily reporting of market data.

(2) *Regulatory Trading Halts.* [Reserved for contemporaneous rulemaking.]

(3) *Speculative Position Limits.* The designated contract market or registered derivatives transaction execution facility shall have rules in place establishing position limits or position accountability procedures for the expiring futures contract month. The designated contract market or registered derivatives transaction execution facility shall,

(i) Adopt a net position limit no greater than 13,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; except where,

(A) For security futures products where, for the most recent six-month period, the average daily trading volume in the underlying security exceeds 20 million shares, or exceeds 15 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market or registered derivatives transaction execution facility may adopt a net position limit no greater than 22,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; or

(B) For security futures products where, for the most recent six-month period, the average daily trading volume in the underlying security exceeds 20 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market or registered derivatives transaction execution facility may adopt a position accountability rule. Upon request by the designated contract market or registered derivatives transaction execution facility, traders who hold net positions greater than 22,500 (100-share) contracts, or such lower level specified by exchange rules, must provide information to the exchange and consent to halt increasing their positions when so ordered by the exchange.

(ii) For a security futures product comprised of more than one security, to be eligible for paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) of this section, the average daily trading volume required must apply to the least liquid security in the index.

(iii) Exchanges may approve exemptions from these position limits pursuant to rules that are consistent with § 150.3 of this chapter.

(b) *Special requirements for cash-settled contracts.* For cash-settled security futures products, the cash-settlement price must be reliable and acceptable, be reflective of prices in the underlying securities market and be not readily susceptible to manipulation. To meet these requirements, the designated contract market or registered derivatives transaction execution facility must have rules providing that: [Reserved for contemporaneous rulemaking.]

(c) *Special requirements for physical delivery contracts.* For security futures products settled by actual delivery of the underlying security or securities, payment and delivery of the underlying security or securities must be effected through a clearing agency that is registered pursuant to section 17A of the Securities Exchange Act of 1934.

Issued in Washington, DC, on July 12, 2001, by the Commission.

**Jean A. Webb,**  
*Secretary.*

[FR Doc. 01-17904 Filed 7-19-01; 8:45 am]

**BILLING CODE 6351-01-P**

**DEPARTMENT OF JUSTICE**

**28 CFR Part 16**

**[AAG/A Order No. 235-2001]**

**Privacy Act of 1974; Implementation**

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice currently exempts the following system of records from subsection (d) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2): Controlled Substances Act Nonpublic Records (JUSTICE/JMD-002). This proposed rule makes changes to reflect the current statutory authority, as well as the primary reason for exempting the system.

**DATES:** Submit any comments by August 20, 2001.

**ADDRESSES:** Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place Building, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Mary Cahill, (202) 307-1823.

**SUPPLEMENTARY INFORMATION:** The system notice for "Controlled Substances Act Nonpublic Records (JUSTICE/JMD-002)" is being published in full text in the Notice section of today's **Federal Register**.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, this order will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in Part 16**

Administrative practices and procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, it is proposed to amend 28 CFR Part 16 as follows:

1. The authority for Part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend § 16.76 by revising paragraph (b)(1) as follows:

**§ 16.76 Exemption of Justice Management Division.**

\* \* \* \* \*

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Access to and use of the nonpublic records maintained in this system are restricted by law. Section 3607(b) of Title 18 U.S.C. (enacted as part of the Sentencing Reform Act of 1984, Public Law 98-473, Chapter II) provides that the sole purpose of these records shall be for use by the courts in determining whether a person found guilty of