

## Securities and Exchange Commission

## § 242.301

(e) *Order* means any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.

(f) *Control* means the power, directly or indirectly, to direct the management or policies of the broker-dealer of an alternative trading system, whether through ownership of securities, by contract, or otherwise. A person is presumed to *control* the broker-dealer of an alternative trading system, if that person:

(1) Is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions);

(2) Directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the broker-dealer of the alternative trading system; or

(3) In the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the broker-dealer of the alternative trading system.

(g) *NMS stock* shall have the meaning provided in § 242.600; *provided, however*, that a debt or convertible debt security shall not be deemed an NMS stock for purposes of this Regulation ATS.

(h) *Effective transaction reporting plan* shall have the meaning provided in § 242.600.

(i) *Corporate debt security* shall mean any security that:

(1) Evidences a liability of the issuer of such security;

(2) Has a fixed maturity date that is at least one year following the date of issuance; and

(3) Is not an exempted security, as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)).

(j) *Commercial paper* shall mean any note, draft, or bill of exchange which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(k) *NMS Stock ATS* means an alternative trading system, as defined in paragraph (a) of this section, that trades NMS stocks, as defined in paragraph (g) of this section.

[62 FR 544, Jan. 3, 1997, as amended at 70 FR 37619, June 29, 2005; 74 FR 52372, Oct. 9, 2009; 83 FR 38911, Aug. 7, 2018]

### § 242.301 Requirements for alternative trading systems.

(a) *Scope of section.* An alternative trading system shall comply with the requirements in paragraph (b) of this section, unless such alternative trading system:

(1) Is registered as an exchange under section 6 of the Act, (15 U.S.C. 78f);

(2) Is exempted by the Commission from registration as an exchange based on the limited volume of transactions effected;

(3) Is operated by a national securities association;

(4)(i) Is registered as a broker-dealer under sections 15(b) or 15C of the Act (15 U.S.C. 78o(b), and 78o-5), or is a bank, and

(ii) Limits its securities activities to the following instruments:

(A) Government securities, as defined in section 3(a)(42) of the Act, (15 U.S.C. 78c(a)(42));

(B) Repurchase and reverse repurchase agreements solely involving securities included within paragraph (a)(4)(ii)(A) of this section;

(C) Any put, call, straddle, option, or privilege on a government security, other than a put, call, straddle, option, or privilege that:

(1) Is traded on one or more national securities exchanges; or

(2) For which quotations are disseminated through an automated quotation system operated by a registered securities association; and

(D) Commercial paper.

(5) Is exempted, conditionally or unconditionally, by Commission order, after application by such alternative trading system, from one or more of the requirements of paragraph (b) of this section or § 242.304. The Commission will grant such exemption only after determining that such an order is consistent with the public interest, the

protection of investors, and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(b) *Requirements.* Every alternative trading system subject to this Regulation ATS, pursuant to paragraph (a) of this section, shall comply with the requirements in this paragraph (b).

(1) *Broker-dealer registration.* The alternative trading system shall register as a broker-dealer under section 15 of the Act, (15 U.S.C. 78o).

(2) *Notice.* (i) The alternative trading system shall file an initial operation report on Form ATS, §249.637 of this chapter, in accordance with the instructions therein, at least 20 days prior to commencing operation as an alternative trading system.

(ii) The alternative trading system shall file an amendment on Form ATS at least 20 calendar days prior to implementing a material change to the operation of the alternative trading system.

(iii) If any information contained in the initial operation report filed under paragraph (b)(2)(i) of this section becomes inaccurate for any reason and has not been previously reported to the Commission as an amendment on Form ATS, the alternative trading system shall file an amendment on Form ATS correcting such information within 30 calendar days after the end of each calendar quarter in which the alternative trading system has operated.

(iv) The alternative trading system shall promptly file an amendment on Form ATS correcting information previously reported on Form ATS after discovery that any information filed under paragraphs (b)(2)(i), (ii) or (iii) of this section was inaccurate when filed.

(v) The alternative trading system shall promptly file a cessation of operations report on Form ATS in accordance with the instructions therein upon ceasing to operate as an alternative trading system.

(vi) Every notice or amendment filed pursuant to this paragraph (b)(2) shall constitute a “report” within the meaning of sections 11A, 17(a), 18(a), and 32(a), (15 U.S.C. 78k–1, 78q(a), 78r(a), and 78ff(a)), and any other applicable provisions of the Act.

(vii) The reports provided for in paragraph (b)(2) of this section shall be considered filed upon receipt by the Division of Trading and Markets, at the Commission’s principal office in Washington, DC. Duplicate originals of the reports provided for in paragraphs (b)(2)(i) through (v) of this section must be filed with surveillance personnel designated as such by any self-regulatory organization that is the designated examining authority for the alternative trading system pursuant to §240.17d–1 of this chapter simultaneously with filing with the Commission. Duplicates of the reports required by paragraph (b)(9) of this section shall be provided to surveillance personnel of such self-regulatory authority upon request. All reports filed pursuant to this paragraph (b)(2) and paragraph (b)(9) of this section shall be deemed confidential when filed.

(viii) An NMS Stock ATS that is operating pursuant to an initial operation report on Form ATS on file with the Commission as of January 7, 2019 (“Legacy NMS Stock ATS”) shall be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section until that ATS files an initial Form ATS–N with the Commission pursuant to §242.304(a)(1)(iv)(A). Thereafter, the Legacy NMS Stock ATS shall file reports pursuant to §242.304. An alternative trading system that trades NMS stocks and securities other than NMS stocks shall be subject to the requirements of §242.304 of this chapter with respect to NMS stocks and paragraph (b)(2) of this section with respect to non-NMS stocks. As of January 7, 2019, an entity seeking to operate as an NMS Stock ATS shall not be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section and shall file reports pursuant to §242.304.

(3) *Order display and execution access.* (i) An alternative trading system shall comply with the requirements set forth in paragraph (b)(3)(ii) of this section, with respect to any NMS stock in which the alternative trading system:

(A) Displays subscriber orders to any person (other than alternative trading system employees); and

(B) During at least 4 of the preceding 6 calendar months, had an average

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daily trading volume of 5 percent or more of the aggregate average daily share volume for such NMS stock as reported by an effective transaction reporting plan.

(ii) Such alternative trading system shall provide to a national securities exchange or national securities association the prices and sizes of the orders at the highest buy price and the lowest sell price for such NMS stock, displayed to more than one person in the alternative trading system, for inclusion in the quotation data made available by the national securities exchange or national securities association to vendors pursuant to § 242.602.

(iii) With respect to any order displayed pursuant to paragraph (b)(3)(ii) of this section, an alternative trading system shall provide to any broker-dealer that has access to the national securities exchange or national securities association to which the alternative trading system provides the prices and sizes of displayed orders pursuant to paragraph (b)(3)(ii) of this section, the ability to effect a transaction with such orders that is:

(A) Equivalent to the ability of such broker-dealer to effect a transaction with other orders displayed on the exchange or by the association; and

(B) At the price of the highest priced buy order or lowest priced sell order displayed for the lesser of the cumulative size of such priced orders entered therein at such price, or the size of the execution sought by such broker-dealer.

(4) *Fees.* The alternative trading system shall not charge any fee to broker-dealers that access the alternative trading system through a national securities exchange or national securities association, that is inconsistent with equivalent access to the alternative trading system required by paragraph (b)(3)(iii) of this section. In addition, if the national securities exchange or national securities association to which an alternative trading system provides the prices and sizes of orders under paragraphs (b)(3)(ii) and (b)(3)(iii) of this section establishes rules designed to assure consistency with standards for access to quotations displayed on such national securities exchange, or the market operated by

such national securities association, the alternative trading system shall not charge any fee to members that is contrary to, that is not disclosed in the manner required by, or that is inconsistent with any standard of equivalent access established by such rules.

(5) *Fair access.* (i) An alternative trading system shall comply with the requirements in paragraph (b)(5)(ii) of this section, if during at least 4 of the preceding 6 calendar months, such alternative trading system had:

(A) With respect to any NMS stock, 5 percent or more of the average daily volume in that security reported by an effective transaction reporting plan;

(B) With respect to an equity security that is not an NMS stock and for which transactions are reported to a self-regulatory organization, 5 percent or more of the average daily trading volume in that security as calculated by the self-regulatory organization to which such transactions are reported;

(C) With respect to municipal securities, 5 percent or more of the average daily volume traded in the United States; or

(D) With respect to corporate debt securities, 5 percent or more of the average daily volume traded in the United States.

(ii) An alternative trading system shall:

(A) Establish written standards for granting access to trading on its system;

(B) Not unreasonably prohibit or limit any person in respect to access to services offered by such alternative trading system by applying the standards established under paragraph (b)(5)(ii)(A) of this section in an unfair or discriminatory manner;

(C) Make and keep records of:

(1) All grants of access including, for all subscribers, the reasons for granting such access; and

(2) All denials or limitations of access and reasons, for each applicant, for denying or limiting access; and

(D) Report the information required on Form ATS-R (§ 249.638 of this chapter) regarding grants, denials, and limitations of access.

(iii) Notwithstanding paragraph (b)(5)(i) of this section, an alternative trading system shall not be required to

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comply with the requirements in paragraph (b)(5)(ii) of this section, if such alternative trading system:

(A) Matches customer orders for a security with other customer orders;

(B) Such customers' orders are not displayed to any person, other than employees of the alternative trading system; and

(C) Such orders are executed at a price for such security disseminated by an effective transaction reporting plan, or derived from such prices.

(6) *Capacity, integrity, and security of automated systems.* (i) The alternative trading system shall comply with the requirements in paragraph (b)(6)(ii) of this section, if during at least 4 of the preceding 6 calendar months, such alternative trading system had:

(A) With respect to municipal securities, 20 percent or more of the average daily volume traded in the United States; or

(B) With respect to corporate debt securities, 20 percent or more of the average daily volume traded in the United States.

(ii) With respect to those systems that support order entry, order routing, order execution, transaction reporting, and trade comparison, the alternative trading system shall:

(A) Establish reasonable current and future capacity estimates;

(B) Conduct periodic capacity stress tests of critical systems to determine such system's ability to process transactions in an accurate, timely, and efficient manner;

(C) Develop and implement reasonable procedures to review and keep current its system development and testing methodology;

(D) Review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters;

(E) Establish adequate contingency and disaster recovery plans;

(F) On an annual basis, perform an independent review, in accordance with established audit procedures and standards, of such alternative trading system's controls for ensuring that paragraphs (b)(6)(ii)(A) through (E) of this section are met, and conduct a review by senior management of a report con-

taining the recommendations and conclusions of the independent review; and

(G) Promptly notify the Commission staff of material systems outages and significant systems changes.

(iii) Notwithstanding paragraph (b)(6)(i) of this section, an alternative trading system shall not be required to comply with the requirements in paragraph (b)(6)(ii) of this section, if such alternative trading system:

(A) Matches customer orders for a security with other customer orders;

(B) Such customers' orders are not displayed to any person, other than employees of the alternative trading system; and

(C) Such orders are executed at a price for such security disseminated by an effective transaction reporting plan, or derived from such prices.

(7) *Examinations, inspections, and investigations.* The alternative trading system shall permit the examination and inspection of its premises, systems, and records, and cooperate with the examination, inspection, or investigation of subscribers, whether such examination is being conducted by the Commission or by a self-regulatory organization of which such subscriber is a member.

(8) *Recordkeeping.* The alternative trading system shall:

(i) Make and keep current the records specified in §242.302; and

(ii) Preserve the records specified in §242.303.

(9) *Reporting.* The alternative trading system shall:

(i) Separately file the information required by Form ATS-R (§249.638 of this chapter) for transactions in NMS stocks, as defined in paragraph (g) of this section, and transactions in securities other than NMS stocks within 30 calendar days after the end of each calendar quarter in which the market has operated after the effective date of this section; and

(ii) Separately file the information required by Form ATS-R for transactions in NMS stocks and transactions in securities other than NMS stocks within 10 calendar days after an alternative trading system ceases to operate.

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(10) *Written procedures to ensure the confidential treatment of trading information.* (i) The alternative trading system shall establish adequate written safeguards and written procedures to protect subscribers' confidential trading information. Such written safeguards and written procedures shall include:

(A) Limiting access to the confidential trading information of subscribers to those employees of the alternative trading system who are operating the system or responsible for its compliance with these or any other applicable rules;

(B) Implementing standards controlling employees of the alternative trading system trading for their own accounts; and

(ii) The alternative trading system shall adopt and implement adequate written oversight procedures to ensure that the written safeguards and procedures established pursuant to paragraph (b)(10)(i) of this section are followed.

(11) *Name.* The alternative trading system shall not use in its name the word "exchange," or derivations of the word "exchange," such as the term "stock market."

[63 FR 70921, Dec. 22, 1998, as amended at 65 FR 13235, Mar. 13, 2000; 70 FR 37619, June 29, 2005; 74 FR 52372, Oct. 9, 2009; 79 FR 72436, Dec. 5, 2014; 83 FR 38911, Aug. 7, 2018]

### § 242.302 Recordkeeping requirements for alternative trading systems.

To comply with the condition set forth in paragraph (b)(8) of § 242.301, an alternative trading system shall make and keep current the following records:

(a) A record of subscribers to such alternative trading system (identifying any affiliations between the alternative trading system and subscribers to the alternative trading system, including common directors, officers, or owners);

(b) Daily summaries of trading in the alternative trading system including:

(1) Securities for which transactions have been executed;

(2) Transaction volume, expressed with respect to equity securities in:

- (i) Number of trades;
- (ii) Number of shares traded; and
- (iii) Total settlement value in terms of U.S. dollars; and

(3) Transaction volume, expressed with respect to debt securities in:

- (i) Number of trades; and
- (ii) Total U.S. dollar value; and

(c) Time-sequenced records of order information in the alternative trading system, including:

(1) Date and time (expressed in terms of hours, minutes, and seconds) that the order was received;

(2) Identity of the security;

(3) The number of shares, or principal amount of bonds, to which the order applies;

(4) An identification of the order as related to a program trade or an index arbitrage trade as defined in New York Stock Exchange Rule 80A;

(5) The designation of the order as a buy or sell order;

(6) The designation of the order as a short sale order;

(7) The designation of the order as a market order, limit order, stop order, stop limit order, or other type or order;

(8) Any limit or stop price prescribed by the order;

(9) The date on which the order expires and, if the time in force is less than one day, the time when the order expires;

(10) The time limit during which the order is in force;

(11) Any instructions to modify or cancel the order;

(12) The type of account, i.e., retail, wholesale, employee, proprietary, or any other type of account designated by the alternative trading system, for which the order is submitted;

(13) Date and time (expressed in terms of hours, minutes, and seconds) that the order was executed;

(14) Price at which the order was executed;

(15) Size of the order executed (expressed in number of shares or units or principal amount); and

(16) Identity of the parties to the transaction.

### § 242.303 Record preservation requirements for alternative trading systems.

(a) To comply with the condition set forth in paragraph (b)(8) of § 242.301, an alternative trading system shall preserve the following records:

(1) For a period of not less than three years, the first two years in an easily

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accessible place, an alternative trading system shall preserve:

(i) All records required to be made pursuant to § 242.302;

(ii) All notices provided by such alternative trading system to subscribers generally, whether written or communicated through automated means, including, but not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the market and denials of, or limitations on, access to the alternative trading system;

(iii) If subject to paragraph (b)(5)(ii) of § 242.301, at least one copy of such alternative trading system's standards for access to trading, all documents relevant to the alternative trading systems decision to grant, deny, or limit access to any person, and all other documents made or received by the alternative trading system in the course of complying with paragraph (b)(5) of § 242.301; and

(iv) At least one copy of all documents made or received by the alternative trading system in the course of complying with paragraph (b)(6) of § 242.301, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records.

(v) At least one copy of the written safeguards and written procedures to protect subscribers' confidential trading information and the written oversight procedures created in the course of complying with paragraph (b)(10) of § 242.301.

(2) During the life of the enterprise and of any successor enterprise, an alternative trading system shall preserve:

(i) All partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books; and

(ii) Copies of reports filed pursuant to paragraph (b)(2) of § 242.301 or § 242.304 of this chapter and records made pursuant to paragraph (b)(5) of § 242.301 of this chapter.

(b) The records required to be maintained and preserved pursuant to paragraph (a) of this section must be produced, reproduced, and maintained in

paper form or in any of the forms permitted under § 240.17a-4(f) of this chapter.

(c) Alternative trading systems must comply with any other applicable recordkeeping or reporting requirement in the Act, and the rules and regulations thereunder. If the information in a record required to be made pursuant to this section is preserved in a record made pursuant to § 240.17a-3 or § 240.17a-4 of this chapter, or otherwise preserved by the alternative trading system (whether in summary or some other form), this section shall not require the sponsor to maintain such information in a separate file, provided that the sponsor can promptly sort and retrieve the information as if it had been kept in a separate file as a record made pursuant to this section, and preserves the information in accordance with the time periods specified in paragraph (a) of this section.

(d) The records required to be maintained and preserved pursuant to this section may be prepared or maintained by a service bureau, depository, or other recordkeeping service on behalf of the alternative trading system. An agreement with a service bureau, depository, or other recordkeeping service shall not relieve the alternative trading system from the responsibility to prepare and maintain records as specified in this section. The service bureau, depository, or other recordkeeping service shall file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the alternative trading system required to be maintained and preserved and will be surrendered promptly on request of the alternative trading system, and shall include the following provision: With respect to any books and records maintained or preserved on behalf of (name of alternative trading system), the undersigned hereby undertakes to permit examination of such books and records at any time, or from time to time, during business hours by the staff of the Securities and Exchange Commission, any self-regulatory organization of which the alternative trading system is a member, or any State securities regulator having

jurisdiction over the alternative trading system, and to promptly furnish to the Commission, self-regulatory organization of which the alternative trading system is a member, or any State securities regulator having jurisdiction over the alternative trading system a true, correct, complete and current hard copy of any, all, or any part of, such books and records.

(e) Every alternative trading system shall furnish to any representative of the Commission promptly upon request, legible, true, and complete copies of those records that are required to be preserved under this section.

[63 FR 70921, Dec. 22, 1998, as amended at 66 FR 55841, Nov. 2, 2001; 83 FR 38911, Aug. 7, 2018]

#### § 242.304 NMS Stock ATSs.

(a) *Conditions to the exemption.* Unless not required to comply with Regulation ATS pursuant to § 242.301(a), an NMS Stock ATS must comply with §§ 242.300 through 242.304 (except § 242.301(b)(2)(i) through (vii)) to be exempt pursuant to § 240.3a1-1(a)(2).

(1) *Initial Form ATS-N.* (i) *Filing and effectiveness requirement.* No exemption is available to an NMS Stock ATS pursuant to § 240.3a1-1(a)(2) unless the NMS Stock ATS files with the Commission an initial Form ATS-N, in accordance with the conditions of this section, and the initial Form ATS-N is effective pursuant to paragraph (a)(1)(iii) or (a)(1)(iv)(A) of this section.

(ii) *Commission review period.* (A) The Commission may, by order, as provided in paragraph (a)(1)(iii) of this section, declare an initial Form ATS-N filed by an NMS Stock ATS ineffective no later than 120 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended review period. The Commission may extend the initial Form ATS-N review period for:

(1) An additional 90 calendar days, if the Form ATS-N is unusually lengthy or raises novel or complex issues that require additional time for review, in which case the Commission will notify the NMS Stock ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or

(2) Any extended review period to which a duly authorized representative of the NMS Stock ATS agrees in writing.

(B) During review by the Commission of the initial Form ATS-N, the NMS Stock ATS shall amend its initial Form ATS-N pursuant to the requirements of paragraphs (a)(2)(i)(B) and (C) of this section. To make material changes to its initial Form ATS-N during the Commission review period, the NMS Stock ATS shall withdraw its filed initial Form ATS-N and may refile an initial Form ATS-N pursuant to paragraph (a)(1) of this section.

(iii) *Effectiveness; Ineffectiveness determination.* (A) An initial Form ATS-N, as amended, filed by an NMS Stock ATS will become effective, unless declared ineffective, upon the earlier of:

(1) The completion of review by the Commission and publication pursuant to paragraph (b)(2)(i) of this section; or

(2) The expiration of the review period, or, if applicable, the end of the extended review period, pursuant to paragraph (a)(1)(ii) of this section.

(B) The Commission will, by order, declare an initial Form ATS-N ineffective if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. If the Commission declares an initial Form ATS-N ineffective, the NMS Stock ATS shall be prohibited from operating as an NMS Stock ATS pursuant to § 240.3a1-1(a)(2). An initial Form ATS-N declared ineffective does not prevent the NMS Stock ATS from subsequently filing a new Form ATS-N.

(iv) *Transition for Legacy NMS Stock ATSs.* (A) *Initial Form ATS-N filing requirements.* A Legacy NMS Stock ATS shall file with the Commission an initial Form ATS-N, in accordance with the conditions of this section, no earlier than January 7, 2019, and no later than February 8, 2019. An initial Form ATS-N filed by a Legacy NMS Stock ATS shall supersede and replace for purposes of the exemption the previously filed Form ATS of the Legacy NMS Stock ATS. The Legacy NMS

Stock ATS may operate, on a provisional basis, pursuant to the filed initial Form ATS–N, and any amendments thereto, during the review of the initial Form ATS–N by the Commission. An initial Form ATS–N filed by a Legacy NMS Stock ATS, as amended, will become effective, unless declared ineffective, upon the earlier of:

(1) The completion of review by the Commission and publication pursuant to paragraph (b)(2)(i) of this section; or

(2) The expiration of the review period, or, if applicable, the end of the extended review period, pursuant to paragraph (a)(1)(iv)(B) of this section.

(B) *Commission review period; Ineffectiveness determination.* The Commission may, by order, as provided in paragraph (a)(1)(iii) of this section, declare an initial Form ATS–N filed by a Legacy NMS Stock ATS ineffective no later than 120 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended review period. The Commission may extend the initial Form ATS–N review period for a Legacy NMS Stock ATS for:

(1) An additional 120 calendar days if the initial Form ATS–N is unusually lengthy or raises novel or complex issues that require additional time for review, in which case the Commission will notify the Legacy NMS Stock ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or

(2) Any extended review period to which a duly-authorized representative of the Legacy NMS Stock ATS agrees in writing.

(C) *Amendments to initial Form ATS–N.* During review by the Commission of the initial Form ATS–N filed by a Legacy NMS Stock ATS, the Legacy NMS Stock ATS shall amend its initial Form ATS–N pursuant to the requirements of paragraphs (a)(2)(i)(A) through (D) of this section.

(2) *Form ATS–N amendment.* (i) *Filing requirements.* An NMS Stock ATS shall amend a Form ATS–N, in accordance with the conditions of this section:

(A) At least 30 calendar days, except as provided by paragraph (a)(2)(i)(D) of this section, prior to the date of imple-

mentation of a material change to the operations of the NMS Stock ATS or to the activities of the broker-dealer operator or its affiliates that are subject to disclosure on Form ATS–N (“Material Amendment”);

(B) No later than 30 calendar days after the end of each calendar quarter to correct information that has become inaccurate or incomplete for any reason and was not required to be reported to the Commission as a Form ATS–N amendment pursuant to paragraphs (a)(2)(i)(A), (C), or (D) of this section (“Updating Amendment”);

(C) Promptly, to correct information in any previous disclosure on Form ATS–N, after discovery that any information previously filed on Form ATS–N was materially inaccurate or incomplete when filed (“Correcting Amendment”); or

(D) No later than seven calendar days after information required to be disclosed in Part III, Items 24 and 25 on Form ATS–N has become inaccurate or incomplete (“Order Display and Fair Access Amendment”).

(ii) *Commission review period; Ineffectiveness determination.* The Commission will, by order, declare ineffective any Form ATS–N amendment filed pursuant to paragraphs (a)(2)(i)(A) through (D) of this section, no later than 30 calendar days from filing with the Commission, if the Commission finds that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. A Form ATS–N amendment declared ineffective shall prohibit the NMS Stock ATS from operating pursuant to the ineffective Form ATS–N amendment. A Form ATS–N amendment declared ineffective does not prevent the NMS Stock ATS from subsequently filing a new Form ATS–N amendment. During review by the Commission of a Material Amendment, the NMS Stock ATS shall amend the Material Amendment pursuant to the requirements of paragraphs (a)(2)(i)(B) through (C) of this section. To make material changes to a filed Material Amendment during the Commission review period, an NMS Stock ATS shall withdraw its filed Material Amendment and must file the new Material Amendment pursuant to (a)(2)(i)(A) of this section.



(3) *Notice of cessation.* An NMS Stock ATS shall notice its cessation of operations on Form ATS-N at least 10 business days prior to the date the NMS Stock ATS will cease to operate as an NMS Stock ATS. The notice of cessation shall cause the Form ATS-N to become ineffective on the date designated by the NMS Stock ATS.

(4) *Suspension, limitation, and revocation of the exemption from the definition of exchange.* (i) The Commission will, by order, if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors, suspend for a period not exceeding twelve months, limit, or revoke the exemption for an NMS Stock ATS pursuant to §240.3a1-1(a)(2) of this chapter.

(ii) If the exemption for an NMS Stock ATS is suspended or revoked pursuant to paragraph (a)(4)(i) of this section, the NMS Stock ATS shall be prohibited from operating pursuant to the exemption pursuant to §240.3a1-1(a)(2) of this chapter. If the exemption for an NMS Stock ATS is limited pursuant to paragraph (a)(4)(i) of this section, the NMS Stock ATS shall be prohibited from operating in a manner otherwise inconsistent with the terms and conditions of the Commission order.

(b) *Public disclosures.* (1) Every Form ATS-N filed pursuant to this section shall constitute a “report” within the meaning of sections 11A, 17(a), 18(a), and 32(a) (15 U.S.C. 78k-1, 78q(a), 78r(a), and 78ff(a)), and any other applicable provisions of the Act.

(2) The Commission will make public via posting on the Commission’s website, each:

(i) Effective initial Form ATS-N, as amended;

(ii) Order of ineffective initial Form ATS-N;

(iii) Form ATS-N amendment to an effective Form ATS-N:

(A) *Material Amendments:* The cover page of the Material Amendment will be made public by the Commission upon filing and, unless the Commission declares the Material Amendment ineffective, the entirety of the Material Amendment, as amended, will be made public by the Commission following

the expiration of the review period pursuant to paragraph (a)(2)(ii) of this section.

(B) *Updating, Correcting, and Order Display and Fair Access Amendments:* The entirety of Updating, Correcting, and Order Display and Fair Access Amendments will be made public by the Commission upon filing. Notwithstanding the foregoing, an Updating or Correcting Amendment filed to a Material Amendment will be made public by the Commission following the expiration of the review period for such Material Amendment pursuant to paragraph (a)(2)(ii) of this section.

(iv) Order of ineffective Form ATS-N amendment;

(v) Notice of cessation; and

(vi) Order suspending, limiting, or revoking the exemption for an NMS Stock ATS from the definition of an “exchange” pursuant to §240.3a1-1(a)(2) of this chapter.

(3) Each NMS Stock ATS shall make public via posting on its website a direct URL hyperlink to the Commission’s website that contains the documents enumerated in paragraph (b)(2) of this section.

(c) *Form ATS-N disclosure requirements.* (1) An NMS Stock ATS must file a Form ATS-N in accordance with the instructions therein.

(2) Any report required to be filed with the Commission under this section shall be filed on Form ATS-N, and include all information as prescribed in Form ATS-N and the instructions thereto. Such document shall be executed at, or prior to, the time Form ATS-N is filed and shall be retained by the NMS Stock ATS in accordance with §§242.303 and §232.302 of this chapter, and the instructions in Form ATS-N.

[83 FR 38911, Aug. 7, 2018]

#### CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

SOURCE: 67 FR 53176, Aug. 14, 2002, unless otherwise noted.

## § 242.400

## 17 CFR Ch. II (4–1–23 Edition)

### § 242.400 Customer margin requirements for security futures—authority, purpose, interpretation, and scope.

(a) *Authority and purpose.* Sections 242.400 through 242.406 and 17 CFR 41.42 through 41.49 (“this Regulation, §§ 242.400 through 242.406”) are issued by the Securities and Exchange Commission (“Commission”) jointly with the Commodity Futures Trading Commission (“CFTC”), pursuant to authority delegated by the Board of Governors of the Federal Reserve System under section 7(c)(2)(A) of the Securities Exchange Act of 1934 (“Act”) (15 U.S.C. 78g(c)(2)(A)). The principal purpose of this Regulation (§§ 242.400 through 242.406) is to regulate customer margin collected by brokers, dealers, and members of national securities exchanges, including futures commission merchants required to register as brokers or dealers under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)), relating to security futures.

(b) *Interpretation.* This Regulation (§§ 242.400 through 242.406) shall be jointly interpreted by the Commission and the CFTC, consistent with the criteria set forth in clauses (i) through (iv) of section 7(c)(2)(B) of the Act (15 U.S.C. 78g(c)(2)(B)) and the provisions of Regulation T (12 CFR part 220).

(c) *Scope.* (1) This Regulation (§§ 242.400 through 242.406) does not preclude a self-regulatory authority, under rules that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) or section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)) and, as applicable, section 5c(c) of the Commodity Exchange Act (“CEA”) (7 U.S.C. 7a–2(c)), or a security futures intermediary from imposing additional margin requirements on security futures, including higher initial or maintenance margin levels, consistent with this Regulation (§§ 242.400 through 242.406), or from taking appropriate action to preserve its financial integrity.

(2) This Regulation (§§ 242.400 through 242.406) does not apply to:

(i) Financial relations between a customer and a security futures intermediary to the extent that they comply with a portfolio margining system under rules that meet the criteria set forth in section 7(c)(2)(B) of the Act (15

U.S.C. 78g(c)(2)(B)) and that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the CEA (7 U.S.C. 7a–2(c));

(ii) Financial relations between a security futures intermediary and a foreign person involving security futures traded on or subject to the rules of a foreign board of trade;

(iii) Margin requirements that clearing agencies registered under section 17A of the Exchange Act (15 U.S.C. 78q–1) or derivatives clearing organizations registered under section 5b of the CEA (7 U.S.C. 7a–1) impose on their members;

(iv) Financial relations between a security futures intermediary and a person based on a good faith determination by the security futures intermediary that such person is an exempted person; and

(v) Financial relations between a security futures intermediary and, or arranged by a security futures intermediary for, a person relating to trading in security futures by such person for its own account, if such person:

(A) Is a member of a national securities exchange or national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)); and

(B) Is registered with such exchange or such association as a security futures dealer pursuant to rules that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the CEA (7 U.S.C. 7a–2(c)), that:

(1) Require such member to be registered as a floor trader or a floor broker with the CFTC under Section 4f(a)(1) of the CEA (7 U.S.C. 6f(a)(1)), or as a dealer with the Commission under section 15(b) of the Act (15 U.S.C. 78o(b));

(2) Require such member to maintain records sufficient to prove compliance with this paragraph (c)(2)(v) and the rules of the exchange or association of which it is a member;

(3) Require such member to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis; and

(4) Provide for disciplinary action, including revocation of such member's registration as a security futures dealer, for such member's failure to comply with this Regulation (§§ 242.400 through 242.406) or the rules of the exchange or association.

(d) *Exemption.* The Commission may exempt, either unconditionally or on specified terms and conditions, financial relations involving any security futures intermediary, customer, position, or transaction, or any class of security futures intermediaries, customers, positions, or transactions, from one or more requirements of this Regulation (§§ 242.400 through 242.406), if the Commission determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors. An exemption granted pursuant to this paragraph shall not operate as an exemption from any CFTC rules. Any exemption that may be required from such rules must be obtained separately from the CFTC.

#### § 242.401 Definitions.

(a) For purposes of this Regulation (§§ 242.400 through 242.406) only, the following terms shall have the meanings set forth in this section.

(1) *Applicable margin rules and margin rules applicable to an account* mean the rules and regulations applicable to financial relations between a security futures intermediary and a customer with respect to security futures and related positions carried in a securities account or futures account as provided in § 242.402(a) of this Regulation (§§ 242.400 through 242.406).

(2) *Broker* shall have the meaning provided in section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)).

(3) *Contract multiplier* means the number of units of a narrow-based security index expressed as a dollar amount, in accordance with the terms of the security future contract.

(4) *Current market value* means, on any day:

(i) With respect to a security future:

(A) If the instrument underlying such security future is a stock, the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation

service, and the applicable number of shares per contract; or

(B) If the instrument underlying such security future is a narrow-based security index, as defined in section 3(a)(55)(B) of the Act (15 U.S.C. 78c(a)(55)(B)), the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable contract multiplier.

(ii) With respect to a security other than a security future, the most recent closing sale price of the security, as shown by any regularly published reporting or quotation service. If there is no recent closing sale price, the security futures intermediary may use any reasonable estimate of the market value of the security as of the most recent close of business.

(5) *Customer* excludes an exempted person and includes:

(i) Any person or persons acting jointly:

(A) On whose behalf a security futures intermediary effects a security futures transaction or carries a security futures position; or

(B) Who would be considered a customer of the security futures intermediary according to the ordinary usage of the trade;

(ii) Any partner in a security futures intermediary that is organized as a partnership who would be considered a customer of the security futures intermediary absent the partnership relationship; and

(iii) Any joint venture in which a security futures intermediary participates and which would be considered a customer of the security futures intermediary if the security futures intermediary were not a participant.

(6) *Daily settlement price* means, with respect to a security future, the settlement price of such security future determined at the close of trading each day, under the rules of the applicable exchange, clearing agency, or derivatives clearing organization.

(7) *Dealer* shall have the meaning provided in section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)).

(8) *Equity* means the equity or margin equity in a securities or futures account, as computed in accordance with

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the margin rules applicable to the account and subject to adjustment under § 242.404(c), (d) and (e) of this Regulation (§§ 242.400 through 242.406).

(9) *Exempted person* means:

(i) A member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant, a substantial portion of whose business consists of transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, futures commission merchants, floor brokers, or floor traders, and includes a person who:

(A) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader that are effecting transactions in securities, commodity futures, or commodity options;

(B) Earns at least \$10 million in gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader; or

(C) Earns at least 10 percent of its gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader.

(ii) For purposes of paragraph (a)(9)(i) of this section only, persons affiliated with a futures commission merchant, floor broker, or floor trader means any partner, officer, director, or branch manager of such futures commission merchant, floor broker, or floor trader (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under com-

mon control with such futures commission merchant, floor broker, or floor trader, or any employee of such a futures commission merchant, floor broker, or floor trader.

(iii) A member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant that has been in existence for less than one year may meet the definition of exempted person based on a six-month period.

(10) *Exempted security* shall have the meaning provided in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)).

(11) *Floor broker* shall have the meaning provided in Section 1a(16) of the CEA (7 U.S.C. 1a(16)).

(12) *Floor trader* shall have the meaning provided in Section 1a(17) of the CEA (7 U.S.C. 1a(17)).

(13) *Futures account* shall have the meaning provided in § 240.15c3-3(a) of this chapter.

(14) *Futures commission merchant* shall have the meaning provided in Section 1a of the CEA (7 U.S.C. 1a).

(15) *Good faith*, with respect to making a determination or accepting a statement concerning financial relations with a person, means that the security futures intermediary is alert to the circumstances surrounding such financial relations, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

(16) *Listed option* means a put or call option that is:

(i) Issued by a clearing agency that is registered under section 17A of the Act (15 U.S.C. 17q-1) or cleared and guaranteed by a derivatives clearing organization that is registered under Section 5b of the CEA (7 U.S.C. 7a-1); and

(ii) Traded on or subject to the rules of a self-regulatory authority.

(17) *Margin call* means a demand by a security futures intermediary to a customer for a deposit of cash, securities or other assets to satisfy the required margin for security futures or related positions or a special margin requirement.

(18) *Margin deficiency* means the amount by which the required margin

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in an account is not satisfied by the equity in the account, as computed in accordance with § 242.404 of this Regulation (§§ 242.400 through 242.406).

(19) *Margin equity security* shall have the meaning provided in Regulation T.

(20) *Margin security* shall have the meaning provided in Regulation T.

(21) *Member* shall have the meaning provided in section 3(a)(3) of the Act (15 U.S.C. 78c(a)(3)), and shall include persons registered under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)) that are permitted to effect transactions on a national securities exchange without the services of another person acting as executing broker.

(22) *Money market mutual fund* means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8) that is considered a money market fund under § 270.2a-7 of this chapter.

(23) *Persons associated with a broker or dealer* shall have the meaning provided in section 3(a)(18) of the Act (15 U.S.C. 78c(a)(18)).

(24) *Regulation T* means Regulation T promulgated by the Board of Governors of the Federal Reserve System, 12 CFR part 220, as amended from time to time.

(25) *Regulation T collateral value*, with respect to a security, means the current market value of the security reduced by the percentage of required margin in a position in the security held in a margin account under Regulation T.

(26) *Related position*, with respect to a security future, means any position in an account that is combined with the security future to create an offsetting position as provided in § 242.403(b)(2) of this Regulation (§§ 242.400 through 242.406).

(27) *Related transaction*, with respect to a position or transaction in a security future, means:

(i) Any transaction that creates, eliminates, increases or reduces an offsetting position involving a security future and a related position, as provided in § 242.403(b)(2) of this Regulation (§§ 242.400 through 242.406); or

(ii) Any deposit or withdrawal of margin for the security future or a related position, except as provided in

§ 242.405(b) of this Regulation (§§ 242.400 through 242.406).

(28) *Securities account* shall have the meaning provided in § 240.15c3-3(a) of this chapter.

(29) *Security futures intermediary* means any creditor as defined in Regulation T with respect to its financial relations with any person involving security futures.

(30) *Self-regulatory authority* means a national securities exchange registered under section 6 of the Act (15 U.S.C. 78f), a national securities association registered under section 15A of the Act (15 U.S.C. 78o-3), a contract market registered under Section 5 of the CEA (7 U.S.C. 7) or Section 5f of the CEA (7 U.S.C. 7b-1), or a derivatives transaction execution facility registered under Section 5a of the CEA (7 U.S.C. 7a).

(31) *Special margin requirement* shall have the meaning provided in § 242.404(e)(1)(ii) of this Regulation (§§ 242.400 through 242.406).

(32) *Variation settlement* means any credit or debit to a customer account, made on a daily or intraday basis, for the purpose of marking to market a security future or any other contract that is:

(i) Issued by a clearing agency that is registered under section 17A of the Act (15 U.S.C. 78q-1) or cleared and guaranteed by a derivatives clearing organization that is registered under Section 5b of the CEA (7 U.S.C. 7a-1); and

(ii) Traded on or subject to the rules of a self-regulatory authority.

(b) Terms used in this Regulation (§§ 242.400 through 242.406) and not otherwise defined in this section shall have the meaning set forth in the margin rules applicable to the account.

(c) Terms used in this Regulation (§§ 242.400 through 242.406) and not otherwise defined in this section or in the margin rules applicable to the account shall have the meaning set forth in the Act and the CEA; if the definitions of a term in the Act and the CEA are inconsistent as applied in particular circumstances, such term shall have the meaning set forth in rules, regulations, or interpretations jointly promulgated by the Commission and the CFTC.

## § 242.402

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### § 242.402 General provisions.

(a) *Applicable margin rules.* Except to the extent inconsistent with this Regulation (§§ 242.400 through 242.406):

(1) A security futures intermediary that carries a security future on behalf of a customer in a securities account shall record and conduct all financial relations with respect to such security future and related positions in accordance with Regulation T and the margin rules of the self-regulatory authorities of which the security futures intermediary is a member.

(2) A security futures intermediary that carries a security future on behalf of a customer in a futures account shall record and conduct all financial relations with respect to such security future and related positions in accordance with the margin rules of the self-regulatory authorities of which the security futures intermediary is a member.

(b) *Separation and consolidation of accounts.* (1) The requirements for security futures and related positions in one account may not be met by considering items in any other account, except as permitted or required under paragraph (b)(2) of this section or applicable margin rules. If withdrawals of cash, securities or other assets deposited as margin are permitted under this Regulation (§§ 242.400 through 242.406), bookkeeping entries shall be made when such cash, securities, or assets are used for purposes of meeting requirements in another account.

(2) Notwithstanding paragraph (b)(1) of this section, the security futures intermediary shall consider all futures accounts in which security futures and related positions are held that are within the same regulatory classification or account type and are owned by the same customer to be a single account for purposes of this Regulation (§§ 242.400 through 242.406). The security futures intermediary may combine such accounts with other futures accounts that are within the same regulatory classification or account type and are owned by the same customer for purposes of computing a customer's overall margin requirement, as permitted or required by applicable margin rules.

(c) *Accounts of partners.* If a partner of the security futures intermediary has an account with the security futures intermediary in which security futures or related positions are held, the security futures intermediary shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of any such account.

(d) *Contribution to joint venture.* If an account in which security futures or related positions are held is the account of a joint venture in which the security futures intermediary participates, any interest of the security futures intermediary in the joint account in excess of the interest which the security futures intermediary would have on the basis of its right to share in the profits shall be margined in accordance with this Regulation (§§ 242.400 through 242.406).

(e) *Extensions of credit.* (1) No security futures intermediary may extend or maintain credit to or for any customer for the purpose of evading or circumventing any requirement under this Regulation (§§ 242.400 through 242.406).

(2) A security futures intermediary may arrange for the extension or maintenance of credit to or for any customer by any person, provided that the security futures intermediary does not willfully arrange credit that would constitute a violation of Regulation T, U or X of the Board of Governors of the Federal Reserve System (12 CFR parts 220, 221, and 224) by such person.

(f) *Change in exempted person status.* Once a person ceases to qualify as an exempted person, it shall notify the security futures intermediary of this fact before entering into any new security futures transaction or related transaction that would require additional margin to be deposited under this Regulation (§§ 242.400 through 242.406). Financial relations with respect to any such transactions shall be subject to the provisions of this Regulation (§§ 242.400 through 242.406).

### § 242.403 Required margin.

(a) *Applicability.* Each security futures intermediary shall determine the

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required margin for the security futures and related positions held on behalf of a customer in a securities account or futures account as set forth in this section.

(b) *Required margin*—(1) *General rule.* The required margin for each long or short position in a security future shall be fifteen (15) percent of the current market value of such security future.

(2) *Offsetting positions.* Notwithstanding the margin levels specified in paragraph (b)(1) of this section, a self-regulatory authority may set the required initial or maintenance margin level for an offsetting position involving security futures and related positions at a level lower than the level that would be required under paragraph (b)(1) of this section if such positions were margined separately, pursuant to rules that meet the criteria set forth in section 7(c)(2)(B) of the Act (15 U.S.C. 78g(c)(2)(B)) and are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, Section 5c(c) of the CEA (7 U.S.C. 7a-2(c)).

(c) *Procedures for certain margin level adjustments.* An exchange registered under section 6(g) of the Act (15 U.S.C. 78f(g)), or a national securities association registered under section 15A(k) of the Act (15 U.S.C. 78o-3(k)), may raise or lower the required margin level for a security future to a level not lower than that specified in this section, in accordance with section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)).

[67 FR 53176, Aug. 14, 2002, as amended at 85 FR 75146, Nov. 24, 2020]

### § 242.404 Type, form and use of margin.

(a) *When margin is required.* Margin is required to be deposited whenever the required margin for security futures and related positions in an account is not satisfied by the equity in the account, subject to adjustment under paragraph (c) of this section.

(b) *Acceptable margin deposits.* (1) The required margin may be satisfied by a deposit of cash, margin securities (subject to paragraph (b)(2) of this section), exempted securities, any other asset permitted under Regulation T to satisfy a margin deficiency in a securities margin account, or any combination

thereof, each as valued in accordance with paragraph (c) of this section.

(2) Shares of a money market mutual fund may be accepted as a margin deposit for purposes of this Regulation (§§ 242.400 through 242.406), *provided that:*

(i) The customer waives any right to redeem the shares without the consent of the security futures intermediary and instructs the fund or its transfer agent accordingly;

(ii) The security futures intermediary (or clearing agency or derivatives clearing organization with which the shares are deposited as margin) obtains the right to redeem the shares in cash, promptly upon request; and

(iii) The fund agrees to satisfy any conditions necessary or appropriate to ensure that the shares may be redeemed in cash, promptly upon request.

(c) *Adjustments*—(1) *Futures accounts.* For purposes of this section, the equity in a futures account shall be computed in accordance with the margin rules applicable to the account, subject to the following:

(i) A security future shall have no value;

(ii) Each net long or short position in a listed option on a contract for future delivery shall be valued in accordance with the margin rules applicable to the account;

(iii) Except as permitted in paragraph (e) of this section, each margin equity security shall be valued at an amount no greater than its Regulation T collateral value;

(iv) Each other security shall be valued at an amount no greater than its current market value reduced by the percentage specified for such security in § 240.15c3-1(c)(2)(vi) of this chapter;

(v) Freely convertible foreign currency may be valued at an amount no greater than its daily marked-to-market U.S. dollar equivalent;

(vi) Variation settlement receivable (or payable) by an account at the close of trading on any day shall be treated as a credit (or debit) to the account on that day; and

(vii) Each other acceptable margin deposit or component of equity shall be valued at an amount no greater than its value under Regulation T.

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(2) *Securities accounts.* For purposes of this section, the equity in a securities account shall be computed in accordance with the margin rules applicable to the account, subject to the following:

(i) A security future shall have no value;

(ii) Freely convertible foreign currency may be valued at an amount no greater than its daily mark-to-market U.S. dollar equivalent; and

(iii) Variation settlement receivable (or payable) to an account at the close of trading on any day shall be treated as a credit (or debit) by the account on that day.

(d) *Satisfaction restriction.* Any transaction, position or deposit that is used to satisfy the required margin for security futures or related positions under this Regulation (§§242.400 through 242.406), including a related position, shall be unavailable to satisfy the required margin for any other position or transaction or any other requirement.

(e) *Alternative collateral valuation for margin equity securities in a futures account.* (1) Notwithstanding paragraph (c)(1)(iii) of this section, a security futures intermediary need not value a margin equity security at its Regulation T collateral value when determining whether the required margin for the security futures and related positions in a futures account is satisfied, *provided that:*

(i) The margin equity security is valued at an amount no greater than the current market value of the security reduced by the lowest percentage level of margin required for a long position in the security held in a margin account under the rules of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a));

(ii) Additional margin is required to be deposited on any day when the day's security futures transactions and related transactions would create or increase a margin deficiency in the account if the margin equity securities were valued at their Regulation T collateral value, and shall be for the amount of the margin deficiency so created or increased (a "special margin requirement"); and

(iii) Cash, securities, or other assets deposited as margin for the positions in an account are not permitted to be withdrawn from the account at any time that:

(A) Additional cash, securities, or other assets are required to be deposited as margin under this section for a transaction in the account on the same or a previous day; or

(B) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency if the margin equity securities were valued at their Regulation T collateral value.

(2) All security futures transactions and related transactions on any day shall be combined to determine the amount of a special margin requirement. Additional margin deposited to satisfy a special margin requirement shall be valued at an amount no greater than its Regulation T collateral value.

(3) If the alternative collateral valuation method set forth in paragraph (e) of this section is used with respect to an account in which security futures or related positions are carried:

(i) An account that is transferred from one security futures intermediary to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this Regulation (§§242.400 through 242.406) has been satisfied; and

(ii) An account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this Regulation (§§242.400 through 242.406), may be treated as if it had been maintained for the transferee from the date of its origin, if the security futures intermediary accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(f) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of determining whether the required margin in



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an account is satisfied, except as permitted under applicable margin rules.

### § 242.405 Withdrawal of margin.

(a) *By the customer.* Except as otherwise provided in § 242.404(e)(1)(ii) of this Regulation (§§ 242.400 through 242.406), cash, securities, or other assets deposited as margin for positions in an account may be withdrawn, provided that the equity in the account after such withdrawal is sufficient to satisfy the required margin for the security futures and related positions in the account under this Regulation (§§ 242.400 through 242.406).

(b) *By the security futures intermediary.* Notwithstanding paragraph (a) of this section, the security futures intermediary, in its usual practice, may deduct the following items from an account in which security futures or related positions are held if they are considered in computing the balance of such account:

(1) Variation settlement payable, directly or indirectly, to a clearing agency that is registered under section 17A of the Act (15 U.S.C. 78q-1) or a derivatives clearing organization that is registered under section 5b of the CEA (7 U.S.C. 7a-1);

(2) Interest charged on credit maintained in the account;

(3) Communication or shipping charges with respect to transactions in the account;

(4) Payment of commissions, brokerage, taxes, storage and other charges lawfully accruing in connection with the positions and transactions in the account;

(5) Any service charges that the security futures intermediary may impose; or

(6) Any other withdrawals that are permitted from a securities margin account under Regulation T, to the extent permitted under applicable margin rules.

### § 242.406 Undermargined accounts.

(a) *Failure to satisfy margin call.* If any margin call required by this Regulation (§§ 242.400 through 242.406) is not met in full, the security futures intermediary shall take the deduction required with respect to an undermargined account in computing its net

capital under Commission or CFTC rules.

(b) *Accounts that liquidate to a deficit.* If at any time there is a liquidating deficit in an account in which security futures are held, the security futures intermediary shall take steps to liquidate positions in the account promptly and in an orderly manner.

(c) *Liquidation of undermargined accounts not required.* Notwithstanding Section 402(a) of this Regulation (§§ 242.400 through 242.406), section 220.4(d) of Regulation T (12 CFR 220.4(d)) respecting liquidation of positions in lieu of deposit shall not apply with respect to security futures carried in a securities account.

## REGULATION AC—ANALYST CERTIFICATION

SOURCE: 68 FR 9492, February 27, 2003, unless otherwise noted.

### § 242.500 Definitions.

For purposes of Regulation AC (§§ 242.500 through 242.505 of this chapter) the term:

*Covered person* of a broker or dealer means an associated person of that broker or dealer but does not include:

(1) An associated person:

(i) If the associated person has no officers (or persons performing similar functions) or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports; and

(ii) If the broker or dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer, any controlling persons, officers (or persons performing similar functions), and employees of the broker or dealer from influencing the activities of research analysts and the content of research reports prepared by the associated person.

(2) An associated person who is an investment adviser:

(i) Not registered with the Commission as an investment adviser because of the prohibition of section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a); and

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(ii) Not registered or required to be registered with the Commission as a broker or dealer.

**NOTE TO DEFINITION OF COVERED PERSON:** An associated person of a broker or dealer who is not a covered person continues to be subject to the federal securities laws, including the anti-fraud provisions of the federal securities laws.

*Foreign person* means any person who is not a U.S. person.

*Foreign security* means a security issued by a foreign issuer for which a U.S. market is not the principal trading market.

*Public appearance* means any participation by a research analyst in a seminar, forum (including an interactive electronic forum), or radio or television or other interview, in which the research analyst makes a specific recommendation or provides information reasonably sufficient upon which to base an investment decision about a security or an issuer.

*Registered broker or dealer* means a broker or dealer registered or required to register pursuant to section 15 or section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o or 78o-4) or a government securities broker or government securities dealer registered or required to register pursuant to section 15C(a)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(a)(1)(A)).

*Research analyst* means any natural person who is primarily responsible for the preparation of the content of a research report.

*Research report* means a written communication (including an electronic communication) that includes an analysis of a security or an issuer and provides information reasonably sufficient upon which to base an investment decision.

*Third party research analyst* means:

(1) With respect to a broker or dealer, any research analyst not employed by that broker or dealer or any associated person of that broker or dealer; and

(2) With respect to a covered person of a broker or dealer, any research analyst not employed by that covered person, by the broker or dealer with whom that covered person is associated, or by any other associated person of the broker or dealer with whom that covered person is associated.

*United States* has the meaning contained in § 230.902(1) of this chapter.

*U.S. person* has the meaning contained in § 230.902(k) of this chapter.

**§ 242.501 Certifications in connection with research reports.**

(a) A broker or dealer or covered person that publishes, circulates, or provides a research report prepared by a research analyst to a U.S. person in the United States shall include in that research report a clear and prominent certification by the research analyst containing the following:

(1) A statement attesting that all of the views expressed in the research report accurately reflect the research analyst's personal views about any and all of the subject securities or issuers; and

(2)(i) A statement attesting that no part of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in the research report; or

(ii) A statement:

(A) Attesting that part or all of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in the research report;

(B) Identifying the source, amount, and purpose of such compensation; and

(C) Further disclosing that the compensation could influence the recommendations or views expressed in the research report.

(b) A broker or dealer or covered person that publishes, circulates, or provides a research report prepared by a third party research analyst to a U.S. person in the United States shall be exempt from the requirements of this section with respect to such research report if the following conditions are satisfied:

(1) The employer of the third party research analyst has no officers (or persons performing similar functions) or employees in common with the broker or dealer or covered person; and

(2) The broker or dealer (or, with respect to a covered person, the broker or dealer with whom the covered person is associated) maintains and enforces

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written policies and procedures reasonably designed to prevent the broker or dealer, any controlling persons, officers (or persons performing similar functions), and employees of the broker or dealer from influencing the activities of the third party research analyst and the content of research reports prepared by the third party research analyst.

### § 242.502 Certifications in connection with public appearances.

(a) If a broker or dealer publishes, circulates, or provides a research report prepared by a research analyst employed by the broker or dealer or covered person to a U.S. person in the United States, the broker or dealer must make a record within 30 days after any calendar quarter in which the research analyst made a public appearance that contains the following:

(1) A statement by the research analyst attesting that the views expressed by the research analyst in all public appearances during the calendar quarter accurately reflected the research analyst's personal views at that time about any and all of the subject securities or issuers; and

(2) A statement by the research analyst attesting that no part of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in such public appearances.

(b) If the broker or dealer does not obtain a statement by the research analyst in accordance with paragraph (a) of this section:

(1) The broker or dealer shall promptly notify in writing its examining authority, designated pursuant to section 17(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(d)) and §240.17d-2 of this chapter, that the research analyst did not provide the certifications specified in paragraph (a) of this section; and

(2) For 120 days following notification pursuant to paragraph (b)(1) of this section, the broker or dealer shall disclose in any research report prepared by the research analyst and published, circulated, or provided to a U.S. person in the United States that the research analyst did not provide the certifications

specified in paragraph (a) of this section.

(c) In the case of a research analyst who is employed outside the United States by a foreign person located outside the United States, this section shall only apply to a public appearance while the research analyst is physically present in the United States.

(d) A broker or dealer shall preserve the records specified in paragraphs (a) and (b) of this section in accordance with §240.17a-4 of this chapter and for a period of not less than 3 years, the first 2 years in an accessible place.

### § 242.503 Certain foreign research reports.

A foreign person, located outside the United States and not associated with a registered broker or dealer, who prepares a research report concerning a foreign security and provides it to a U.S. person in the United States in accordance with the provisions of §240.15a-6(a)(2) of this chapter shall be exempt from the requirements of this regulation.

### § 242.504 Notification to associated persons.

A broker or dealer shall notify any person with whom that broker or dealer is associated who publishes, circulates, or provides research reports:

(a) Whether the broker or dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer, any controlling persons, officers (or persons performing similar functions), or employees of the broker or dealer from influencing the activities of research analysts and the content of research reports prepared by the associated person; and

(b) Whether the associated person has any officers (or persons performing similar functions) or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports and, if so, the identity of those persons.

### § 242.505 Exclusion for news media.

No provision of this Regulation AC shall apply to any person who: