

(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 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(§§ 242.400 through 242.406), cash, securities, or other assets deposited as margin for positions in an account may be withdrawn, provided that the equity in the account after such withdrawal is sufficient to satisfy the required margin for the security futures and related positions in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

EFFECTIVE DATE NOTE: At 68 FR 9492, Feb. 27, 2003, §§ 242.500—242.505 were added effective Apr. 14, 2003.

### § 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

(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

## 17 CFR Ch. II (4-1-03 Edition)

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(l) 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